

WIRELESS TELECOMMUNICATION FACILITIES EXCERPT FROM CHARLOTTE ZONING ORDINANCE

Section 12.108. Height limitations.

Height limitations are established to allow maximum development potential without adversely impacting the character of established single family neighborhoods and ensuring the development respects and complements the surrounding development.

No structure shall exceed a height of 40 feet, except as provided in this Section or elsewhere in these regulations.

- (1) A building that is not in or adjacent to a residential district, may be erected to a height in excess of 40 feet, provided the minimum side yard is increased 1 foot for every 2 feet of building height in excess of the 40 feet.
(Petition No. 2011-038, § 12.108(1),07/18/11)
- (2) A building located in any zoning district, except the residential districts, which abuts a residential use or residential zoning district shall not be erected to a height in excess of 40 feet, unless the side and/or rear yard abutting the residential use or zoning district is increased 1 foot for every foot of building height in excess of 40 feet.
(Petition No. 2011-038, § 12.108 (2),07/18/11)
- (3) Reserved
(Petition No. 2011-038, § 12.108 (3),07/18/11)
- (4) The height limitations established in subsection (1) above shall not apply to public utility poles and lines, skylights, and roof structures for elevators, stairways, tanks, heating, ventilation and air-conditioning equipment, firewalls, chimneys, or similar equipment for the operation and maintenance of a building, and any device used to screen such structures and equipment.
(Petition No. 2011-038, § 12.108 (4),07/18/11)
- (5) The following structures are permitted above the height limit on lots in the research, institutional, office, business, and industrial districts which do not abut lots in any residential district: towers, steeples, flagpoles, firewalls, water tanks or similar structures. If this type of structure is on a lot, which abuts a residential district, then the part of the structure above the height limit must be separated from any such abutting lot line by a distance equal to its height measured from the ground.
- (6) The structures listed in subsection 12.108(5) above are also permitted above the height limit in residential districts. However, any part of such a structure, which extends above the height limit must be separated from any abutting property line by a distance equal to its height measured from the ground. Television, amateur

radio operators, and similar antennas, which extend above the height limit, may be separated from any abutting property line by one foot for every two feet in height above the permitted height. Otherwise, the structure will be subject to the usual requirements for the particular district.

- (7) Radio and television towers and similar structures, as a principal or accessory use, are permitted above the height limit in any district. If such a structure is located on a lot in or abutting a residential district, it must be located at least 200 feet from all abutting property lines.
- (8) **Wireless communications transmission facilities** including, but not limited to towers, masts, antennae and related antenna support structures are permitted above (or below) the height limit in any district. All wireless communications transmission facilities located in a residential district (residential 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 within 400 feet of a residential zoning district shall conform to the concealment standards specified in Section 12.108.(8)(j). Wireless communications transmission facilities may be constructed up to a height of 40 feet in any zoning district, and need only comply with the underlying zoning district's separation standards concerning setback, side and rear yards. All wireless communications transmission facilities of up to 150 feet in height, whether permitted as a principal use on a site or as an ancillary or secondary use on a site, must be designed and equipped with the technological and structural capability to accommodate at least two wireless communications carriers. All such towers over 150 feet in height must be designed and equipped with the technological and structural capability to accommodate at least three wireless communication carriers. Lots and buildings thereon must conform to the minimum area, height and yard requirements for the district in which they are located unless otherwise indicated by subsection (a) below. If the facility is above 40 feet in height and is located on a lot in or adjacent to residential district, the facility must comply with subsection (7) above, unless otherwise indicated by subsections (d) and (e) below. The maximum required separation for wireless communication transmission facilities from any abutting property line in any zoning district shall be 200 feet.

The facility plant and/or any related support building shall be allowed in accordance with the provision of Section 12.504. Replacement of existing wireless communication transmission facilities to increase the height of such facilities shall be allowed in accordance with the separate provisions of subdivision (d) below.

- (a) Wireless communications transmission facilities are permitted above (or below) the height limit in any zoning district as an ancillary or secondary use on a site where another use (other than single family or duplex use) is

already established as the principal use of the property, such as a school, church, multi-family residential complex, shopping center, office building, commercial, golf courses, parks or other similar use. In this case, the wireless communications facility shall not be required, regardless of the underlying zoning, to separately comply with the normal district standards dealing with lot area, height and frontage on a public street and subdivision regulations so long as the principal use complies with such requirements for the underlying district nor shall the facility be required to comply with requirements of the Tree Ordinance. For lots in or adjacent to a residential district, wireless communications facilities may be constructed over 40 feet in height provided that the minimum setback, side and rear yards adjacent to the residentially zoned property are increased by one foot for each one foot of facility height in excess of 40 feet, up to a maximum required separation 200 feet. If a proposed wireless communications facility is located on residentially zoned property, separation from adjoining nonresidential zoned property shall be controlled by the adjoining nonresidential zoned property's minimum separation standards concerning setback, side and rear yards, as appropriate. However, if the proposed wireless communications transmission facility is located in a nonresidential district and adjoins only nonresidential districts, the facility may be constructed to any height subject to underlying minimum district requirements for separation from adjoining properties. 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 site is abandoned, demolished or removed. However, if the wireless communications transmission tower is ever replaced, it must then comply with all applicable yards, setbacks, and separation standards as a principal use in the district. The changing of, additions to, or removal of antenna on the tower as well as the co-location of additional carriers on the tower shall be permitted and shall not require the tower to be brought into compliance with current separation requirements.

- (b) Wireless communications facilities are permitted above the height limit on lots in research, institutional, office, business, and industrial districts, which do not adjoin lots in a residential district. Lots must conform to the minimum area and yard requirements for the district in which they are located unless otherwise indicated by subsection (a) above.
- (c) Wireless communications transmission facilities are permitted atop any building or structure (other than single family or other residential structure of less than two stories in height) in any district so long as such facilities do not exceed 20 feet in height measured from the top of the highest point of the existing structure. Any such facility as well as the associated antennae located in a residential district or within 400 feet of a residential district must be indiscernible from the rest of the building or structure.

(d) Replacement of Existing Wireless Communication Towers With Additional Height:

Wireless communications transmission facilities existing at the time of the adoption of this ordinance amendment may be replaced in any zoning district with replacement facilities containing taller towers or antennae and shall not be required to conform to the separation standards concerning setback, side and rear yard requirements applicable to a tower or antenna of such increased height as provided in section (a) provided that:

1. The height of the replacement tower may not exceed the height of the original tower by more than 50 feet. (The addition of up to 50 feet in height under this section may occur only once).
2. The replacement tower must conform to the separation standards concerning setback, side and rear yard requirements applicable to the original tower at the time it was originally constructed.
3. The replacement tower must utilize monopole construction. Any tower 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. Any tower over 150 feet in height must be designed and equipped with the technological and structural capability to accommodate at least three wireless communication carriers.
4. The Wireless Communications facility owner must provide Engineering and Property Management with an affidavit signed by at least one other wireless communications carrier stating that it needs a wireless communications facility within 1000 feet of the subject site and agreeing to co-locate on the replacement tower. *(Petition No. 2005-78, § 12.108(8)(d)(4), 06/20/05)*
5. The replacement tower must conform to the landscaping and buffering requirements in force at the time of the replacement tower permit application, and
6. Notification of adjacent property owners and neighborhood leaders is required as outlined in section 12.108(g). However, notification of adjoining properties, which are zoned for non-residential purposes, is not required.

(e) Replacement of Existing Wireless Communication Towers at the Same Height:

Any existing wireless communications transmission facility, including but

not limited to towers, masts, antennae and related antenna support structures, may be removed and replaced with a new facility within 100 feet of the same location without being required to conform to the current zoning standards applicable to the underlying zoning district at the time of such replacement so long as such replacement is no closer to the setback, side or rear yards than the existing facility and provided that:

1. The height of the replacement facility does not exceed that of the original facility.
2. The replacement facility must utilize monopole construction. Any tower up to 150 feet in height must be designed and equipped with the technological and structural capability to accommodate at least two wireless communication carriers. Any tower over 150 feet in height must be designed and equipped with the technological and structural capability to accommodate at least three wireless communication carriers.
3. The replacement facility shall comply with the landscaping and buffering requirements applicable at the time of replacement
4. If the new facility is to be used for the co-location of two or more wireless communications carriers at the time of its construction, the wireless communications facility owner must provide Engineering and Property Management with an affidavit signed by at least one other wireless communications carrier stating that it needs a wireless communications facility within 1000 feet of the subject site and agreeing to co-locate on the new tower for the remainder of the term of the existing lease, if the property on which the tower is located is leased.
(Petition No. 2005-78, § 12.108(8)(e)(4), 06/20/05)
5. The applicant has up to 90 calendar days to remove the original tower after the new facility is installed.

- (f) The wireless communications facility equipment building or buildings used in connection with facilities permitted under Section 8(a) (d) or (e) shall be limited to 500 sq. ft. per communications company using said facility and be limited to 15 feet in height; provided however, that the building height limitation may be waived by the Director of Engineering and Property Management, or his or her designee, up to a maximum height of 25 feet in order to accommodate architectural design, screening or similar special needs.

(Petition No. 2005-78, § 12.108(8)(f), 06/20/05)

- (g) Public Notification Process for Certain Wireless Communications Transmission Facilities:

(1) *Purpose of Notification*

Wireless communication transmission facilities may have impacts on nearby properties. While the use can be permitted subject to certain standards, neighboring residential property owners should have the opportunity to learn about these uses to hear an explanation of the proposed facility, present relative information that may affect the design of the facility, and to furnish information on the permit application.

(2) *Applicability of Notification*

Any application for a permit for a wireless communication facility as outlined under Section 12.108(8) (8a) or (8d) for a site that is in or within 100 feet of a residential district is subject to the following notification process.

(3) *Notification Process*

The following notification process is required for certain wireless communication facilities or replacement of an existing tower with additional height except that notification of abutting properties which are zoned for non-residential purposes is not required and except as provided under section 12.108(8b),(8c), (8e) and (8i). The notification process is designed to facilitate the exchange of information between the permit applicants and affected nearby property owners.

(Petition No. 2005-78, § 12.108(8)(g)(3)(a)(b)(c), 06/20/05)

(a) Engineering and Property Management shall mail a notice to all property owners, as shown on the County tax listing, within 100 feet of the proposed facility site including those across a street. In addition, Engineering and Property Management shall mail a notice to neighborhood leaders, as determined by an updated list provided at Charlotte-Mecklenburg Planning Department staff office, within one mile of the proposed facility site.

(Petition No. 2012-020, § 12.108,(8)(g)(3)(a), 05/14/2012)

(b) Any permit applicant shall be responsible for supplying Engineering and Property Management with postage paid envelopes addressed to adjacent property owners and neighborhood leaders as noted above. Any error in an

owner's or neighborhood leader's list or any other procedural error or omission shall not invalidate the issuance of an otherwise properly issued permit.

- (c) Engineering and Property Management shall not render a decision on the application until 30 calendar days has elapsed following the date of the mailing of the notification letters. The 30-day notification period may be used by any interested party to discuss the proposed wireless communication transmission facility with the permit applicant. The permit applicant shall in good faith consider any comments from such adjoining property owners concerning landscaping and screening and other design issues of the facility.

(h) Wireless Communication Transmission Facilities Data Base:

Any permit applicant shall submit the following information to Engineering and Property Management as part of the application process for any new or replacement tower or for any modifications to an existing tower. For this purpose, the changing, adding to or taking from antenna on any existing tower shall not be considered a modification to an existing tower.

(Petition No. 2005-78, § 12.108(8)(h), 06/20/05)

1. Street addresses for all existing wireless communication towers owned, leased, or operated by the permit applicant in Mecklenburg County.
2. Height of all existing wireless communication towers owned, leased, or operated by the permit applicant in Mecklenburg County.
3. The ground elevation above sea level for all existing wireless communication towers owned, leased, or operated by the permit applicant in Mecklenburg County, and
4. The longitude and latitude for all existing wireless communication towers owned, leased, or operated by the permit applicant in Mecklenburg County.

- (i) Wireless communication transmission facilities may be installed on other non-wireless transmission towers (such as public utility towers, television towers and radio towers) as long as such facilities do not exceed 25 feet in height above the utility transmission tower height. Such facilities do not trigger the notification provisions or the separation or yard requirements, and are not required to conform to the concealment measures of Section 12.108 (8) (j).

- (j) All new wireless communication transmission facilities located in or within 400 feet of a residential zoning district 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).

- (k) All new or replacement wireless communication transmission facilities as well as modifications to existing facilities shall comply with all applicable regulations of the Federal Communications Commission.
- (l) Any wireless communications transmission facility that is unused for a continuous period of twelve months shall be removed by the tower owner or the property owner.
- (m) Wireless Communications Facilities, Towers and Antenna, as used in the preceding sections and sub-sections shall not include television and radio broadcast towers, personal or company owned and used communications towers and facilities or common carrier micro wave towers. It is the intent of this ordinance that Wireless Communications Facilities, Towers and Antenna include those operations, which are commonly referred to as Cellular and PCS services.
- (9) The height limitations established in this section shall not apply to structures located in the PED, UI, UMUD, or UR-C, districts unless the districts are located next to a single family use or district as provided for in Chapter 9, Parts 4, 9 and 10.

(Petition No. 2011-038, § 12.108(9),07/18/11)

