BROWN COUNTY ORDINANCE 16-_____

An ordinance to amend the wireless communications facilities provisions of Chapter 12 of the Brown County Zoning Ordinance.

WHEREAS, the Board of Commissioners of the County of Brown, Indiana ("Commissioners") adopted a comprehensive zoning ordinance for Brown County, Indiana, in 1964, and adopted a revised version of that ordinance in 1989 ("Zoning Ordinance");

WHEREAS, the Zoning Ordinance contains provisions ("Provisions") regulating the location, construction, use, and permitting of wireless communications facilities;

WHEREAS, amendments ("Amendments") to the Provisions have been proposed that would bring the Provisions into compliance with recent amendments to federal and Indiana statutes relating to wireless communications facilities;

WHEREAS, the Brown County Area Plan Commission conducted at least one public hearing on the proposed Amendments and certified its recommendation on the Amendments to the Commissioners; and,

WHEREAS, the Commissioners find that the adoption of the Amendments, as certified, and the inclusion of the Amendments in the Zoning Ordinance would promote the purposes of the Zoning Ordinance as authorized by Indiana Code Sections 36-7-4-601, including, without limitation, the promotion of the pubic health, safety, comfort, morals, convenience and general welfare, the lessening or avoidance of congestion in public ways, and the securement of adequate light, air, convenience of access, and safety from other danger;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Brown, Indiana, as follows:

Section 1. Section 1.2 of the Zoning Ordinance shall be, and hereby is, amended by the addition of the following definitions:

Abandon, for purposes of Chapter 12, means to intentionally, permanently, and completely, cease all business activity associated with a wireless support structure.

Accessory Equipment means any equipment serving or being used in conjunction with a wireless communications wireless support structure or facility. Accessory equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, guy wires, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval means the zoning approval that the Administrator or the Administrator's designee is authorized to grant after Administrative Review.

Administrative Review means the non-discretionary evaluation of an application by the Administrator or designee, without a public hearing.

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

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.

Carrier on Wheels or Cell on Wheels ("COW") or Mobile Stations means a portable self-contained wireless communications facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna wireless support structure.

Concealed Wireless Communications Facility means any wireless communications facility that is integrated as an architectural feature of an existing structure or any new wireless support structure designed so that the purpose of the facility or wireless support structure for providing wireless services is not readily apparent to a casual observer.

Electrical transmission tower means a structure that physically supports high voltage overhead power lines. The term does not include a utility pole.

Equipment compound means the area that surrounds or is near the base of a wireless support structure and encloses wireless communication facilities.

Existing Structure – Previously erected wireless support structure or any other structure, including but not limited to, buildings and water tanks, to which wireless communications facilities can be attached. The term does not include a utility pole or an electrical transmission tower.

Fall Zone - the area within which the wireless support structure is designed to collapse.

Minor modification means any improvement to existing structures that do not qualify as substantial modifications, do not result in an increase to the fall zone to an extent that would result in a violation of the setback requirement and that is eligible for administrative review and approval.

Monopole means a single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Ordinary maintenance means ensuring that communications facilities and wireless support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a wireless support structure's

foundation or of the wireless support structure itself. Ordinary maintenance includes replacing antennas of a similar size, weight, shape and color and accessory equipment within an existing wireless communications facility and relocating the antennas of approved communications facilities to different height levels on an existing monopole or tower upon which they are currently located. Ordinary maintenance does not include minor and substantial modifications.

Permit authority means the Brown County board, commission, or employee that, or who, makes legislative, quasi-judicial, or administrative decisions concerning the construction, installation, modification, or siting of wireless facilities or wireless support structures.

Replacement means removing the pre-existing wireless support structure and constructing a new wireless support structure of proportions and of equal height or such other height that would not constitute a substantial modification to a pre-existing wireless support structure in order to support a wireless communications facility or to accommodate collocation.

Small cell facility means: (1) a personal wireless service facility (as defined by the Federal Telecommunications Act of 1996, as in effect on July 1, 2015); or, (2) a wireless service facility that satisfies the following requirements: (A) each antenna, including exposed elements, has a volume of three (3) cubic feet or less; (B) all antennas, including exposed elements, have a total volume of six (6) cubic feet or less; (C) the primary equipment enclosure located with the facility has a volume of seventeen (17) cubic feet or less. For purposes of part (2)(C) 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; back up power systems; grounding equipment; power transfer switches; and cut-off switches.

Small cell network means a collection of interrelated small cell facilities designed to deliver wireless service.

Substantial modification of a wireless support structure means the replacement of a wireless support structure and/or the mounting of a wireless facility on a wireless support structure in a manner that: (1) increases the height of the wireless support structure by the greater of: (A) ten percent (10%) of the original height of the wireless support structure; or, (B) twenty (20) feet; (2) adds an appurtenance to the wireless support structure that protrudes horizontally from the wireless support structure more than the greater of: (A) twenty (20) feet; or, (B) the width of the wireless support structure at the location of the appurtenance; (3) increases the square footage of the equipment compound in which the wireless facility is located by more than two thousand five hundred (2,500) square feet; or, (4) any improvement that results in a structure which failes to meet the General Standards and Design Requirements for Wireless Communications Facilities set forth in Chapter 12 of this Ordinance. The term does not include the following: (1) Increasing the height of a wireless support structure to avoid interfering with an existing antenna; (2)

Increasing the diameter or area of a wireless support structure to: (A) shelter an antenna from inclement weather; or, (B) connect antenna to the wireless support structure by cable.

Tower means a lattice-type structure, guyed or freestanding, that supports one or more Antennas.

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

Wireless communications facility or **wireless facility** means the set of equipment and network components necessary to provide wireless communications service. The term does not include a wireless support structure.

Wireless support structure means a freestanding structure designed to support wireless facilities. The term does not include a utility pole or an electrical transmission tower.

Section 2. The definition of the term "co-location" set forth in Section 1.2 of the Zoning Ordinance shall be, and hereby is, amended to read as follows:

Co-location or 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 of wireless facilities within an approved equipment compound.

Section 3. Section 3.1 of the Zoning Ordinance shall be, and hereby is, amended by the addition of footnote 9 to the Public Facilities – Wireless Communication Facilities use matrix, which footnote shall read as follows:

9. Unless exempted from the special exception use permit requirement by Chapter 12.

Section 4. Subsection 4.1 G of the Zoning Ordinance shall be, and hereby is, amended to read as follows:

G. Spires, church steeples, chimneys, cooling towers, elevator bulkheads, fire towers, scenery lofts, penthouses, stacks, tanks, water towers, transmission towers, wireless communication facilities and support structures, and necessary mechanical appurtenances may be erected or changed to any height that is not otherwise prohibited.

Section 5. Subsection 4.9 A of the Zoning Ordinance shall be, and hereby is, amended by the addition of the following setback regulations for wireless communication facilities and support structures:

USE	FRONT	SIDE	REAR
Wireless Communication Facility or Support Structure	See Table 12.1		

Section 6. Subsection 6.3 C of the Zoning Ordinance shall be, and hereby is, amended to read as follows:

C. A site plan review will be required for an airport, a heliport, a hospital, an industrial park, a mobile home park or travel trailer park, a penal or correctional institution, a private recreational development, a public utility substation or exchange, PUD, a shopping center, a wireless communication facility and/or support structure, and a commercial or industrial development.

Section 7. Chapter 12 of the Zoning Ordinance shall be, and hereby is, amended to read as follows:

CHAPTER 12 – WIRELESS COMMUNICATONS FACILITIES

12.1 Purpose

The purpose of this chapter is to:

1. regulate the design, construction, placement, modification, and removal of wireless communications facilities;

2. allow the providers of wireless communications services to provide for adequate coverage and capacity while minimizing the overall impact of additional towers and protecting the fundamental characteristics of the various zoning districts;

3. encourage co-location, the use of attached facilities, concealed facilities, and the use of appropriate public and semi-public properties whenever feasible;

4. require designs and parameters compatible with adjacent land uses, and to conserve the scenic, historic, aesthetic and environmental quality of Brown County and the tourism industry based thereon from the adverse impacts of wireless communications facilities development;

5. promote long-range planning and cooperation between the citizens and property owners of Brown County, the Brown County Area Plan Commission, the Board of Zoning Appeals, the County Commissioners, and the wireless communications services providers;

6. protect the public health, safety and general welfare of the community; and,

7. give due regard to the policies of Brown County's Comprehensive Plan when evaluating proposals for wireless communications facilities.

12.2 Permitted Uses

A. Permitted Uses without a Special Exception

1. Co-location: placement of an antenna array if located on a legally existing or previously approved wireless communication facility or wireless support structure, including water towers or other structures (individually or collectively "WCF").

2. Attached wireless communication facility. An antenna array may be integrated with/within another existing structure (e.g., a building façade or water tower) as long as the attachment would not constitute a substantial modification.

3. Replacement or expansion of a legal, existing WCF that would constitute a substantial modification. This replacement is subject to the application procedures, general requirements and abandonment provisions of this Chapter.

B. Permitted Uses with a Special Exception:

In addition to the requirements of this Chapter, all new WCFs not included in 12-2(A) above, must receive a Special Exception from the Brown County Area Board of Zoning Appeals and shall be subject to the requirements of Chapter 3 (Special Exceptions), Sections 1, 4, 5, Chapter 4, Sections 11, 12, and Chapter 6, Section 3. Special Exception approval shall be required for placement of a new WCF in all zoning districts.

C. Exemptions:

The following wireless communications facilities are exempt from the provisions of this Chapter: police, fire, ambulance and other emergency dispatch; amateur (HAM) radio; antennas used solely for residential household television and radio reception and satellite dishes measuring 2 meters or less in diameter.

D. Prohibitions:

Any WCF not expressly permitted under Subsection (A) Permitted Uses, Subsection (B), Permitted Uses with Special Exception, or not exempted under Subsection (C), Exemptions, are prohibited. Speculative construction of towers for future leasing (i.e., without specific for antennas at the time the application for the tower is submitted) is specifically prohibited.

E. Conditions of Approval:

The following conditions apply to all permitted uses:

1. Applicants and/or petitioners agree to make a good faith effort on terms consistent with any applicable national agreement or on terms common to the region, to accommodate requests for co-location that originate from a provider, from the WCF owner, or from the Area Plan Commission;

2. Property owners and/or agents shall accept and accommodate the provisions for co-location prescribed by this ordinance, and shall agree to the renting or leasing of space on a support structure of WCF, for co-location, at fair market prices and terms without discrimination;

3. Upon completion of the support structure or WCF, owners and/or operators of the support structure or WCF agree to make a good faith effort to accommodate co-location (placement of additional antenna arrays) in a timely manner, including those WCF or antenna arrays proposed by other service providers.

4. No approval for a WCF or support structure shall become valid until written approval of a written statement of no objection from all relevant federal, state, or local agencies with regulatory authority has been submitted to the Director of the Area Plan Commission.

12.3 General Requirements

The following requirements apply to all WCFs that are erected or placed within the County jurisdictional area after the effective date of this chapter:

A. For each application under Chapter 12, section 2 (A) and (B), the property owners, WCF owners, and wireless communications service provider(s) shall be considered co-applicants and shall be jointly and severally subject to the provisions of this ordinance.

B. Each application for a permit to add to an existing WCF or for a Special Exception for placement of new WCF shall be accompanied by the following:

1. Application Form: A completed application form, that:

a. identifies the names, business addresses, and points of contact for the applicants;

b. states the location of the proposed or affected wireless support structures or wireless facilities;

c. includes original signatures from all applicants including the property owners, WCF owners, and wireless communications service providers.

2. Construction Plan: A construction plan that describes the locations of the proposed co-location, attachment, replacement, substantial modification, or wireless support structure (by property address, latitude/longitude coordinates, and township, range, section, ¼ section, shown on a plat map obtained from the Auditor's office), and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment, means of access, proposed site improvements, and compliance with the Building Code. The construction plan shall also include, to the extent applicable: the total height and width of the wireless facility and/or wireless support structure, including cross section and elevation, footing, foundation and wind speed details; a structural analysis indicating the capacity for future and existing antennas, including a geotechnical report and calculations for the foundation's capacity; the identity and qualifications of each person directly responsible for the design and construction; and signed and sealed documentation from a professional engineer that shows the proposed location of the wireless facility and wireless support structure, the area within which the wireless support structure is designed to collapse, and all easements, roadways, and existing structures within a distance of the wireless support structure that is equal to the height of the structure, and all other information necessary to demonstrate compliance with this Chapter.

3. For new wireless support structures, 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 support structure was not a viable option because co-location:

   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.

4. For new wireless support structures, evidence showing that the application complies with the Special Exception criteria set forth in the ordinance.

5. For new wireless support structures that also require variance approval, evidence showing that the application complies with the variance criteria set forth in the ordinance.

C. If an applicant submits the information required by this Section, the application shall be deemed to be complete.

D. Information that the applicant deems to be confidential shall be submitted on green colored paper and shall be treated as confidential, and not available to the public, to the extent authorized by Ind. Code 5-14-3, *et seq.*

E. An applicant shall pay the application fee established by the Brown County Area Plan Commission. An applicant may submit a single application and pay a single application fee, to co-locate multiple wireless facilities or to establish multiple small cell facilities as part of a single small cell network.

12.4 Application Review Procedure

A. Determination of Completion/Defects. Within ten (10) days of receipt of an application, the permit authority shall review an application to determine if the application is complete. If the permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application.

B. Cure. An applicant for approval under 12.2(A)(3) of this Chapter that receives a written notice of incompletion may cure the defects and resubmit the application within thirty (days) of receiving the notice. An applicant for approval under 12.2(A)(1) or (2) of this Chapter that receives a written notice of incompletion may cure the defects and resubmit the application within fifteen (15) days of receiving notice. If the applicant is unable to cure the defects within the relevant cure period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

C. Decision by Permit Authority. With respect to an application for approval under 12.2(A)(3) of this Chapter, not more than ninety (90) days after the permit authority makes an initial determination of completeness, the permit authority shall: (1) review the application to determine if it complies with applicable laws and ordinances governing land use and zoning; and (2) notify the applicant in writing whether the application is approved or denied. However, if the applicant requested additional time to cure defects in the application, the ninety (90) day decision period shall be extended for a corresponding time. With respect to an application for approval under 12.2(A)(1) or (2) of this Chapter, not more than forty-five (45) days after the permit authority makes an initial determination of completeness, the permit authority shall: (1) review the application to determine if it complies with applicable laws and ordinances governing land use and zoning; and (2) notify the applicant in writing whether the application is approved or denied. However, if the applicant requested additional time to cure defects in the application, the forty-five (45) day decision period shall be extended for a corresponding time.

D. Variances/Decision. With respect to an application for approval under 12.2(A)(3), if the application for the proposed wireless support structure requires a variance from the terms of the Ordinance, the permit authority shall have an additional thirty (30) days to comply with the relevant decision periods of Subsection C above.

E. Written Decisions. A written decision shall state clearly the basis for the decision to approve or deny an application. If the permit authority denies an application, the written notice must include substantial evidence in support of the denial. A notice is considered written if it is included in the minutes of a public meeting of the permit authority.

F. Administrative Approval. Approvals sought under 12.2(A)(1) and (2) may be granted by the Planning Director without public hearing.

12. 5 Performance Standards

A. Security. For all WCF excepting Attached WCF, a perimeter fence at least eight (8) feet high shall be installed to circumscribe and contain the WCF, along with all accessory structures and/or facilities. Use of razor wire is prohibited.

B. Lighting.

1. Security lighting is not required. However, if security lighting is installed it shall be confined to accessory structure(s), directed downward to minimize~~d~~ glare or intrusion into adjoining properties.

2. Any WCF, support structure, or antenna array that requires illumination shall meet FAA requirements. When there is a choice between red and white strobe lights on the tower, red lights with maximum intervals between flashes shall be required. All lighting shall be shielded underneath or on the bottom of the bulb, so as to reduce glare on adjoining and nearby uses.

3. Other illumination is prohibited.

C. Landscaping.

1. The following planting requirements shall be applied to all applications or petitions for construction of WCF and/or support structures:

a. A double staggered row of evergreen trees, planted at seven (7) ft. in height (measured from grade) and at no more than fifteen (15) ft. intervals along the perimeter of the fence to screen the facilities from adjoining properties; or,

b. A mix of deciduous shade trees (2.5"caliper) and large deciduous shrubs (at least 48" in height) of sufficient density along the perimeter of the fence to adequately screen the facilities from adjoining properties.

c. Existing vegetation within twenty feet (20) of the security fence that is preserved shall be credited towards planting requirements.

2. The provisions of this section may be waived, in whole or in part, by the Area Plan Commission upon a determination that: site conditions would not be adequate to support landscape plantings; or, that architectural camouflage ("stealth" design) will insure compatibility with adjoining land uses and eliminate the need for screening.

3. All landscape plantings shall be properly maintained or replaced as necessary to ensure their good health and viability for the life of the WCF and/or support structure.

D. Signage. Identification signage, no more than three (3) square feet in total area, shall be required for each WCF/support structure, and/or accessory facility. Identification signage shall include the name(s) of the facility owner(s) or operator(s) and a 24-hour emergency telephone number, and shall be affixed to a perimeter fence or entrance where possible. Signage shall be decided by the Board for each application. Advertising signage is prohibited.

E. Attached WCF. Attached WCF shall be appropriately integrated with, or within, existing structures with due consideration given to sitting/placement, color, camouflage, size and type of construction. Attached WCF shall be designed to minimize visual impact and antenna arrays shall not exceed the height of the existing structure by more than twenty (20) feet.

F. Noise.

1. Noise-producing equipment shall be sited and/or insulated to guarantee that no increase in noise above ambient levels measured at the property line occur.

2. Backup Generations, if used, shall only be operated during power outages and for testing and maintenance purposes. Routine testing and maintenance, if conducted, shall only be conducted between the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday.

G. Color and Camouflage.

1. All WCF, support structures, accessory buildings, poles, antennas and other external facilities shall be painted upon installation and thereafter repainted as necessary with a "flat" paint. Except where dictated by the FAA, paint color shall, at the discretion of the Planning Director or Plan Commission, be designed to minimize visibility & blend with the surrounding environment.

2. Accessory buildings and/or structures shall be designed to be architecturally similar and compatible with each other, and shall not exceed twelve (12) feet in height and 750 square feet in area. Accessory buildings and/or structures shall be used only for the housing of equipment needed to service the WCF and/or antenna array(s) located on the premises. Where possible, accessory buildings and/or

structures shall be attached or clustered so as to appear as one building. Exterior facades shall incorporate materials, textures and colors that blend with the surroundings to minimize visual impact.

3. The Director of the Area Plan Commission and/or Area Plan Commission shall reserve the right to require architectural camouflage, or "stealth design," if a proposed site is deemed sensitive for any of the following reasons:

   a. the prospective site is located in, or within 300 feet of, property officially designated as "Historic" by the State of Indiana, Brown County or the village of Nashville, listed with the Indiana Historic Site and Structures Inventory, or located within property listed with the National Register of Historic Places.

   b. the prospective site lies in, or within 300 feet of a right-of-way classified as a scenic corridor by the Brown County Comprehensive Plan or the State of Indiana.

H. Materials. Excepting Attached WCF, all support structures shall be constructed of galvanized metal. The provisions of this section may be waived by the Director of the Area Plan Commission upon a determination that architectural camouflage ("stealth" design) will satisfy the intent of this section.

I. Health and Safety.

1. All WCF and/or support structures shall be constructed, operated, maintained and monitored in compliance with all applicable federal (i.e., FCC and FAA) and state standards and requirements.

2. WCF and/or support structures that would be classified as a hazard to air navigation, as defined by the Federal Aviation Administration, shall not be permitted.

12.7 Temporary WCF

A. Temporary WCF or antennas shall be permitted for test purposes, emergency communications or in the event of equipment failure for a maximum period of two (2) weeks, subject to the requirements of Section 12.3 (B) (1) through (5) and (7) through (10).

B. If the application is investigating co-location opportunities for a proposed antenna array, and demonstrates with written documentation that good faith co-location negotiations are in process, a temporary WCF may be approved by the Director of the Area Plan Commission for a period not to exceed six months subject to the requirements of Section 12.3 (B) (1) through (5) and (7) through (10).

C. An improvement location permit shall be required for each Temporary WCF.

12.8 Abandonment

A. Any WCF or support structure that is no longer needed or used for its intended purpose shall be considered abandoned and shall be reported immediately by the service provider to the Director of the Area Plan Commission. All abandoned WCF and/or support structures shall be completely removed by, and at the expense of, the service provider and/or owner within six (6) months from the date of abandonment and the surface of the site shall be restored to a condition suitable for development.

B. The County may remove any discontinued WCF or support structure that is not completely removed within six (6) months from the date of abandonment. Costs associated with the dismantling and removal of an abandoned WCF or support structure and site restoration shall be paid by the service provider and/or owner as bound by the terms of the maintenance and facility removal agreement described in Section 12.3 (B)(6).

TABLE 12.1

Performance Standard	**All WCF, support structures**
Maximum Permitted Height Without Variance	199 feet
Front Yard Setback (minimum)	Certified fall zone of tower plus 50 feet
Side Yard Setback (minimum)	Certified fall zone of tower plus 50 feet
Rear Yard Setback (minimum)	Certified fall zone of tower plus 50 feet

Section 8. The provisions of this ordinance are separable. If any part or provision of This ordinance or the application thereof to any persons or circumstances is adjudged invalid by a court of competent jurisdiction on procedural or any other grounds, the judgment shall be confined in its operation to the part, provision, procedure or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this ordinance or the application thereof to other persons or circumstances. The Board of Commissioners of the County of Brown, Indiana, hereby declares that it would have enacted the remainder of this ordinance even without any such part, provision, procedure or application.

Section 9. All provisions of the Brown County Zoning Ordinance in conflict herewith are hereby repealed.

Section 10. The Executive Director of the Brown County Area Plan Commission shall be, and hereby is, directed and authorized to incorporate these amendments into the Brown County Zoning Ordinance text.

Section 11. This ordinance shall be effective upon the date of adoption and satisfaction of any relevant statutory publication requirements.

SO ORDAINED AND ADOPTED this _____ day of _____, 2016, by the Board of Commissioners of the County of Brown, Indiana.

BOARD OF COMMISSIONERS

"AYES"	"NAYS"
_____ President	_____ President
_____	_____
_____	_____

ATTEST: _____, Auditor