



Hall County Regional Planning Commission

Wednesday, June 02, 2010
Regular Meeting

Item F4

**Public Hearing - Wireless Communication Tower Regulation
Chapter 36 Article XI**

Insert a narrative here

Staff Contact:

Agenda Item #5

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

May 24, 2010

SUBJECT:

Concerning amendments to the Zoning Resolution for Hall County, the Zoning Ordinances for Wood River, Alda, Cairo, and Doniphan and their 1 mile extra-territorial jurisdiction, and the Zoning Ordinance for the City of Grand Island and its 2 mile extra-territorial jurisdiction. Changes are being proposed to the following sections of each resolution or ordinance : Wireless Communications Tower Regulations for Hall County (6.01) the City of Grand Island (number), the city of Wood River (Section 7.11) and the Villages of Alda, Cairo and Doniphan (7.11). The proposed changes will repeal the existing regulations and replace them with updated regulations in preparation for each entity entering into a contract with The Center for Municipal Solutions (C-14-2010All)

PROPOSAL:

The proposed changes are attached.

The existing sections will be replaced with the new regulations as proposed.

OVERVIEW:

In December of 2009 the Hall County Regional Planning Commission appointed 2 members of the Planning Commission to meet with Bob Naumann, representing The Center for Municipal Solutions (CMS), a wireless communication siting consulting company.

The Planning Commission members met with Mr. Naumann and staff from the City and County Planning, Building and Legal Departments. After that meeting it was decided that the Hall County Regional Planning Commission should pursue a contract for services similar to those offered by CMS. Planning staff worked with attorneys representing all of the County and Municipal entities to draft an acceptable request for proposals; the Planning Commission, representing all of the entities, would solicit proposals.

In March of 2010 the Hall County Regional Planning Commission advertised for proposals for a consultant with expertise in wireless communication tower regulations to provide consulting services to Hall County, Grand Island, Wood River, Alda, Cairo and Doniphan. One company responded to the RFP. The Center for Municipal Solutions

meets all of the requirements of that RFP. A copy of the RFP is attached as is a copy of the proposal submitted by CMS.

These new regulations if adopted would establish a consistent framework for approving wireless communications facilities across the County. The main advantage to contracting with CMS is technical expertise. The Center for Municipal Solutions is a group of professionals with extensive experience in wireless communications facilities. They have people that understand the engineering diagrams and discussion, and that can ask intelligent questions about the need for a tower and review the answers provided by wireless communication companies.

This expertise can be made available to the County, Cities and Villages at no direct cost to the communities. The regulations as proposed include a payment into an escrow account to be maintained by the community and used to pay the consultants. The process of getting a conditional use permit does not begin until the wireless company has paid the money into the escrow account.

SPECIFIC SECTIONS OF THE REGULATIONS FOR REVIEW:

The regulations as shown are specific to Hall County, Grand Island, Wood River and the 3 villages. Each are shown numbered for the appropriate document the last two digits of the number (§36-168.01, §6.01.01 and §7.11.01) are the same for each paragraph heading regardless of the version being read. Each version references the appropriate body, (Board or Council). Planning Commission will receive the annotated version of the regulations. The annotations specify areas that are different from the original version supplied by CMS or areas that involve policy decisions that need to be made by the board or council with input from the planning commission.

Section x.06 B

Based on these new regulations existing towers are only grandfathered in with the current equipment. If there is any visible modification to the tower including the size or type or number of antennas attached a full review and compliance with these regulations will be required. The Board or Council can grant relief to specific sections of the regulations under x.28 to allow the existing tower to continue even if it does not meet all of the requirements of the regulations. The consultants from CMS will review any request for relief from the regulations and make a recommendation to the elected body.

Section x.09

This set of regulations specifies a priority for placement of towers. First choice, as suggested, is an existing tall structure owned by the City. Second choice is any other tall structure. First choice for a new tower is City owned property. This requirement is a policy decision for the Council or Board. If the regulations are adopted this way it will provide the possibility for generating revenue from the leases. CMS will provide negotiating expertise to the entities.

Section x.15

Adopting these regulations as proposed will change the setback requirements for Grand Island, Wood River, Alda, Cairo and Doniphan. The setbacks will be increased. The current regulations allow a 50' tower at the required set back and require that the tower be set back 1 foot from that setback for every 1 foot of tower height over 50'. If the zoning set back is 10' a 50' tower can be built at 10' of the property line, a 100' tower can be built at 60' off the property line (10' + 100' - 50'), a 150' tower can be built 110 feet off the property line (10' + 150' - 50'). The new regulations would require a 50' tower to be built 60' off the property line (10' + 50'), a 100' tower to be built 110' from the property line (10' + 100') and a 150' tower at 165' from the property line (15' + 150'). Again relief from this can be request under section x.28 and CMS will make a recommendation to the Council or Board about granting the relief.

Section x.20

Each entity will have to adopt their fee for the application. CMS suggests a fee of \$5000 for a new tower and \$2500 for an administrative review. The fees that have been adopted by Nebraska entities have been \$3000 and \$1500. It is suggested that each entity change their fee schedule to adopt these fees instead of including them in the zoning regulations. If they are included in the zoning regulations they cannot be changed without going through the process to amend the regulations.

Section x.23

This section only applies to towers and facilities built on City/Village/County owned property.

Section x.28

This section allows the applicant to make a request that does not conform to these regulations. Once the request is made, CMS will review the request and the reasoning behind the request. For example if the tower applicant cannot find a piece of property large enough to meet the setback for their tower in the right location they can request relief to put the tower on the piece they are able to find. CMS may recommend in favor of that if the tower company can provide evidence of additional structural elements to the tower or break points in the tower that will help insure that the tower will fall within the existing property boundaries if there ever is an issue.

RECOMMENDATION:

That the Regional Planning Commission recommend that the Hall County Board, Grand Island City Council, Wood River City Council and the Village Boards of Alda, Cairo and Doniphan **approve** the changes to the regulations as proposed.

_____ Chad Nabity AICP, Planning Director

REQUEST FOR PROPOSALS BY THE HALL COUNTY REGIONAL PLANNING COMMISSION FOR WIRELESS TELECOMMUNICATIONS FACILITY SITING SERVICES

Request for Proposals

1. PURPOSE

The Hall County Regional Planning Commission on behalf of Hall County, the Cities of Grand Island and Wood River, and the Villages of Alda, Doniphan and Cairo is pursuing a contract to retain a Consultant to provide professional services for the purpose of assisting, advising and representing the above governmental units on matters relating to the preparation of a Wireless Telecommunications Facilities Local Ordinances/Regulation for the said entities, and reviewing and analyzing applications received by said entities for Wireless Telecommunications Facilities and other Telecommunications related matters and issues.

2. SCOPE OF WORK

LOCAL ORDINANCE/REGULATION

Consultant shall prepare and deliver to the Hall County Regional Planning Commission a draft Wireless Telecommunications Facilities Local Ordinance/Regulation (hereinafter referred to as Ordinance) which is consistent with the Federal Telecommunications Act of 1996 and applicable Nebraska statutes.

SERVICES RELATED TO THE PROCESSING OF APPLICATIONS

Consultant shall furnish appropriate Wireless Telecommunications Facilities siting assistance and advice to the Client and Client officials involved in the processing of applications for Wireless Telecommunications Facilities, and, in connection therewith, shall:

- a. Review all applications filed with the County or Municipal Entity for Wireless Telecommunications Facilities;
- b. Assist and advise the County or Municipal Entity in the analysis of the applications, to include attending meetings with the Applicants and/or County and/or Municipal Staff or officials as required;
- c. Recommend in writing to the County or Municipal Entity whether a particular application should be approved or disapproved, and set forth in writing the reasons for such recommendation;
- d. Review and certify construction of the facility in compliance with the application and the Conditional Use Permit and in writing recommend when/if the certificate of compliance should be issued.

3. COMPENSATION

Consultant shall provide a statement regarding the basis of compensation for the Scope of Work to be provided.

4. TERM OF AGREEMENT

This agreement shall be for a period of up to three (3) years commencing on the date the contract is approved. The right to terminate upon 90 days notice is reserved.

5. REQUIRED QUALIFICATIONS

Consultant shall provide a brief Statement of Qualifications with the proposal that documents, at a minimum, the following:

- 1 Name, address, telephone and fax numbers of organization
- 2 Year established and any former names of firm
- 3 Whether the Consultant has any professional ties or relationships, whether direct or indirect, with any members of the wireless industry or the tower ownership/management industry and, if so, what companies.
- 4 Name, title, address and contact information of Consultant's primary contact person
- 5 Brief summary of experience in performing similar services for local government
- 6 Professional licenses held in Nebraska
- 7 Number of projects related to the siting, design and construction of wireless facilities with site acquisition, tower, service provider and carrier representatives performed in the last 12 months, i.e. for the industry, and the names of carriers or tower companies for whom work was done.
- 8 Number of projects for local governments performed in past year related to the siting, design and construction of wireless facilities
- 9 A Statement that the Consultant will not undertake a project related to the siting, design and construction of wireless facilities outside of a state or local government context during the term of the contract.
- 10 Certificate of Insurance indicating policy limits
- 11 References for similar work performed by Consultant

6. STANDARDS FOR REVIEW OF PROPOSALS

Points	Criteria
20 Points	No Ties to or Current Ownership in any members of the wireless industry or the tower ownership/management industry
20 Points	Experience Providing Similar Services for Local Governments
20 Points	Professional Licenses held in Nebraska
20 Points	Number of projects for local governments performed in past year related to the siting, design and construction of wireless facilities
20 Points	Positive Referrals
- 20 Points	Ties to or Current Ownership in any members of the wireless industry or the tower ownership/management industry
-10 Points	1 to 3 projects related to the siting, design and construction of wireless facilities with site acquisition, tower, service provider and carrier representatives performed in the last 12 months
-20	More than 3 projects related to the siting, design and construction of wireless facilities with site acquisition, tower, service provider and carrier representatives performed in the last 12 months

7. SUBMITTAL INFORMATION

Interested parties should submit 5 copies of the Proposal outlining how they would perform the scope of work along with a compensation basis statement in a sealed envelope marked on the outside of the envelope, RFP for Wireless Telecommunications Facility Siting Services to:

Chad Nabity
Regional Planning Director
P.O. Box 1968
Grand Island, Nebraska 68802

Proposals must be received no later than 3:00 PM Central Time on April 2, 2010.

The Hall County Regional Planning Commission or a Committee appointed by the Commission may at their discretion request interviews with qualified applicants prior to making a recommendation to the governing bodies and furthermore reserves the right to reject any or all proposals or waive any technicalities in the submitted proposals.

Request for Proposals

The Hall County Regional Planning Commission is Requesting Proposals from Companies wishing to provide Wireless Telecommunications Facility Siting Services to Hall County, Grand Island, Wood River, Alda, Cairo, and Doniphan. An information packet outlining the services requested and qualifications for evaluation can be requested from at (308) 385-5240 or on the web at www.grand-island.com on the Regional Planning/Community Development Page.

Interested parties should submit 5 copies of the Proposal outlining how they would perform the scope of work along with a compensation basis statement in a sealed envelope marked on the outside of the envelope, RFP for Wireless Telecommunications Facility Siting Services to:

Chad Nabity
Regional Planning Director
P.O. Box 1968
Grand Island, Nebraska 68802

Proposals must be received no later than 3:00 PM Central Time on April 2, 2010.

The Hall County Regional Planning Commission or a Committee appointed by the Commission may at their discretion request interviews with qualified applicants prior to making a recommendation to the governing bodies and furthermore reserves the right to reject any or all proposals or waive any technicalities in the submitted proposals.

ARTICLE XI WIRELESS COMMUNICATION FACILITES

36-168.01. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the City of Grand Island's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The City of Grand Island finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the City's land use policies, the City is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Ordinance is to minimize impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Grand Island.

36-168.02. Title.

This Ordinance shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the City of Grand Island.

36-168.03. Severability.

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

- B) Any Conditional Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Permit shall be void in total, upon determination by the City.

36-168.04. Definitions.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A) "**Accessory Facility or Structure**" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

- B) **“Applicant”** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.
- C) **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
- D) **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
- E) **“Co-location”** means the use of an existing Tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed within ~~90 days (weather permitting)~~ after the new tower is constructed.
- F) **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
- G) **“Completed Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.
- H) **“Council”** means the City Council of the City of Grand Island.
- I) **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- J) **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
- K) **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna, lightning protection device ~~(or strobe)~~.
- L) **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

Comment [CoG11]: Defined reasonably short time

Comment [CoG12]: Added strobe to this list for lighted towers

- M) **“NIER”** means Non-Ionizing Electromagnetic Radiation
- N) **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- O) **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’
- P) **“Personal Wireless Services”** or **“PWS”** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange and is also referred to as **“Personal Telecommunications Service”** or **“PCS”**
- Q) **“Repairs and Maintenance”** means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
- R) **“Conditional Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Wireless Telecommunications Facilities as granted or issued by the City.
- S) **“Stealth”** or **“Stealth Technology”** means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,
- T) **“State”** means the State of Nebraska.
- U) **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems
- V) **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities
- W) **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’
- X) **“Temporary”** means, temporary in relation to all aspects and components of Article XI of this ordinance, something intended to, or that does not exist for more than ninety (90) days.
- Y) **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
- Z) **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a

support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, specialized mobile radio (SMR), paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

36-168.05. Overall Policy and Desired Goals for Conditional Use Permits and Administrative Review for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the City's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the City hereby adopts an overall policy with respect to Conditional Use Permits and Administrative Review for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- A) Requiring a Conditional Use Permit for any new Wireless Telecommunications Facility
- B) Requiring Administrative Review for co-location or modification of a Wireless Telecommunications Facility that does not require a change in the height of the tower.
- C) Implementing an Application process for person(s) seeking a Conditional Use Permit for or Administrative Review of Wireless Telecommunications Facilities;
- D) Establishing a policy for examining an application for and issuing a Conditional Use Permit, and Administrative Reviews for Wireless Telecommunications Facilities that is both fair and consistent.
- E) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers
- E) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- F) That in granting a Conditional Use Permit or permitting after Administrative Review, the City has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the City.

Comment [C3]: Administrative Review gives the opportunity to review the towers for safety and loading and forces the communication companies to consider sites as outlined by the preference of the city, village or county.

36-168.06. Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) Except as otherwise provided by this Ordinance no Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this Ordinance without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Conditional Use Permit shall be required for those non-commercial exceptions noted in §36-168.07.
- B) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this Ordinance. Relief from these regulations, for existing legally permitted Wireless Telecommunications Facilities, may be sought by the applicant as shown in section §36-168.28 of this ordinance.
- C) Any Repair and Maintenance of a Wireless Facility does not require an Application for a Conditional Use Permit.

Comment [C4]: This does not grandfather existing towers if they need to make any changes. This could be problematic for towers issued with permits based on the current height limitations

36-168.07. Exclusions. The following shall be exempt from this Ordinance:

- A) The City’s fire, police, department of transportation or other public service facilities owned and operated by the local government.
- B) Any facilities expressly exempt from the City’s siting, building and permitting authority.
- C) Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.
- D) Facilities exclusively for private, non-commercial radio and television reception and private citizen’s bands, licensed amateur radio and other similar non-commercial Telecommunications.
- E) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

36-168.08. Conditional Use Permit Application and Other Requirements.

- A) All Applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Ordinance. The City Council is the officially designated agency or body of the City to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities. The City may at

its discretion delegate or designate other official agencies or officials of the City to accept, review, analyze, evaluate and make recommendations to the City Council with respect to the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities.

- B) The City may reject applications not meeting the requirements stated herein or which are otherwise incomplete
- C) No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the City, and the Conditional Use Permit has been issued.
- D) Any and all representations made by the Applicant to the City on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the City.
- E) An Application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
- F) The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
- G) The Applicant shall include a statement in writing:
 - 1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the City in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable City, State and Federal Laws, rules, and regulations;
 - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- H) Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a Registered Professional surveyor, engineer, architect and or other individual as necessary, licensed in the State of Nebraska.
- I) In addition to all other required information as stated in this ordinance, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.
 - 1) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
 - 2) Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the City.

Comment [C5]: This may differ based on what is being considered, survey, construction plans, stealth antennas, geo technical data etc..

Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;

- 3) The name, address and phone number of the person preparing the report;
 - 4) The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;
 - 5) The 911 address and tax parcel number of the property;
 - 6) The Zoning District in which the property is situated;
 - 7) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
 - 8) The location of nearest residential structure;
 - 9) The location, size and height of all existing and proposed structures on the property which is the subject of the Application;
 - 10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
 - 11) The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
 - 12) The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;
 - 13) The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users
 - 14) A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - 15) The frequency, modulation and class of service of radio or other transmitting equipment;
 - 16) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
 - 17) Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;
 - 18) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
 - 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
 - 20) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design. The investigation, evaluation and design shall be prepared by a licensed professional.
- J) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application. If the analysis determines that the

structure is within the approach or turning zone of the airport then approvals must be received from the local airport.

K) Application for New Tower

- 1) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the City in the Application, along with any letters of rejection stating the reason for rejection.
- 2) In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the City. The Applicant shall inform the City, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application.
- 3) The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:
 - a) The foreseeable number of FCC licenses available for the area;
 - b) The kind of Wireless Telecommunications Facilities site and structure proposed;
 - c) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
 - d) Available space on existing and approved Towers.
- 4) The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
 - a) Respond within 60 days to a request for information from a potential shared-use Applicant;
 - b) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;

- c) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.
 - d) Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit.
- L) The Applicant shall provide certification with documentation (structural analysis as provided by a professional engineer licensed in the State of Nebraska) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, City, State and Federal structural requirements for loads, including wind and ice loads.
- M) If proposal is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.
- N) All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.
- O) If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:
- 1) If a new Tower or increasing the height of an existing structure is proposed, a computer generated “Zone of Visibility Map” at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.
 - 2) Pictorial representations of “before and after” (photo simulations) views from key viewpoints both inside and outside of the City as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
 - 3) A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

- P) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility
- Q) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This may include the utilization of stealth or concealment technology if required by the City.
- R) All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with all Laws, Ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- S) At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- T) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- U) A holder of a Conditional Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- V) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.
- W) An Applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.
- X) The holder of a Conditional Use Permit shall notify the City of any intended Modification of a Wireless Telecommunication Facility and shall apply to the City to modify, relocate or rebuild a Wireless Telecommunications Facility.

36-168.09. Location of Wireless Telecommunications Facilities.

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (8) being the lowest priority.
- 1) On existing Towers or other structures on City owned properties.
 - 2) On existing Towers or other structures on other property in the city
 - 3) A new Tower on City-owned properties;
 - 4) A new Tower on properties in areas zoned for Heavy Manufacturing use
 - 5) A new Tower on properties in areas zoned for Manufacturing uses other than Heavy Manufacturing
 - 6) A new Tower on properties in areas zoned for Commercial use
 - 7) A new Tower on properties in areas zoned for Agricultural use not planned for residential use in Comprehensive Plan
 - 8) A new Tower on properties in areas zoned for Residential use
- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the City why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an Application for any of the following reasons.
- 1) Conflict with safety and safety-related codes and requirements;
 - 2) Conflict with the historic nature or character of a neighborhood or historical district;
 - 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
 - 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers;

Comment [C6]: Need to decided on priorities. The Manufacturing, Commercial, Agricultural, Residential is obvious but how do we feel about cell sites on public land. This is a potential source of long term revenue for the communities. We could also eliminate the public provisions and just do this based on the zoning district.

- 5) Conflicts with the provisions of this Ordinance.

36-168.10. Shared Use of Wireless Telecommunications Facilities and Other Structures.

- A) The City shall prefer Applicants to locate on existing Towers or others structures without increasing the height instead of the construction of a new Tower. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within one (1) mile of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.
- B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.
- C) Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.

36-168.11. Height of Telecommunications Tower(s).

- A) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.
- B) No Tower constructed after the effective date of this Ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with City, State, and/or any Federal statute, law, local law, City Ordinance, code, rule or regulation.

36-168.12. Visibility of Wireless Telecommunications Facilities.

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law. Towers requiring lighting shall submit a request for relief from §36-168.11 (B) as allowed under §36-168.28 of this ordinance.
- B) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.
- C) If lighting is required, Applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

36-168.13. Security of Wireless Telecommunications Facilities.

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A) All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B) Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

36-168.14. Signage.

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

36-168.15. Lot Size and Setbacks.

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

36-168.16. Retention of Expert Assistance and Reimbursement by Applicant.

- A) The City may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.
- B) An Applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the City in connection with the review of any Application including where applicable, the lease negotiation, the pre -approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the City shall precede the pre-application meeting. The City will maintain a separate escrow account for all such funds. The City’s consultants/experts shall invoice the City for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the City before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.

Comment [C7]: The existing setback requirements are less than what would be required here.

Existing Setback Requirements §36-173. Setbacks and Separation or Buffer Requirements

(A) All towers up to fifty (50) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of fifty (50) feet in height shall be set back one additional foot for each foot of tower height in excess of fifty (50) feet, except where such setback is from property owned, controlled and/or maintained by the City of Grand Island and the City Council finds in granting the permit that reducing such additional setback will not cause harm to the intended use of the public property. The height of a tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.

(B) Towers exceeding one hundred (100) feet in height may not be located in any residential zoned district and must be separated from all residential zoned land and occupied structures other than those utilized by the tower owner, by a minimum of two hundred (200) feet or one hundred percent (100%) of the height of the proposed tower, whichever is greater.

(C) Towers of one hundred (100) feet or less in height may be located in residential zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, by a minimum of one hundred percent (100%) of the height of proposed tower.

- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

36-168.17. Public Hearing and Notification Requirements.

- A) Prior to the approval of any Application for a Conditional Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the City, notice of which shall be published in the newspaper general circulation in of the City no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the City may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within two hundred (200) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
- B) There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
- C) The City shall schedule the Public Hearing referred to in Subsection (A) of this section once it finds the Application is complete, the City, at any stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

36-168.18. Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) The City will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The City may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.
- C) After the Public Hearing and after formally considering the Application, the City may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
- D) If the City approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the City's action, and the Conditional Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the City, such as site plan or zoning approvals, shall be required by the City for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.

- E) If the City denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the City's action.

36-168.19. Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities.

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

- A) Such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the City.
- B) Such Conditional Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Conditional Use Permit.

36-168.20. Application Fee.

At the time that a Person submits an Application for a Conditional Use Permit for a new Tower or an Administrative Review of an existing tower or structure, such Person shall pay a non-refundable application fee to the City as set by the City Fee Schedule.

Comment [C8]: Each entity will have to include conditional use permits for wireless communication facilities in their fee schedule. The consultants recommend \$5000 for a new tower and \$2500 for a co-location or Administrative Review nationally. Nebraska counties tend to make those fees \$3000 and \$1500.

36-168.21. Performance Security.

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit.

36-168.22. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

36-168.23. Liability Insurance for facilities located on city owned property

- A) A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below
 - 1) Commercial General Liability covering personal injuries, death and property damage:
\$1,000,000 per occurrence/\$2,000,000 aggregate;
 - 2) Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
 - 3) Workers Compensation and Disability: Statutory amounts
- B) For a Wireless Telecommunications Facility on City property, the Commercial General Liability insurance policy shall specifically include the City and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least forty five (45) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the granting of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

36-168.24. Indemnification.

- A) Any application for Wireless Telecommunication Facilities that is proposed for City property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities

36-168.25. Fines (Reference section §36-161)

- A) In the event of a violation of this Ordinance or any Conditional Use Permit issued pursuant to this Ordinance, the City may prosecute the holder of the Conditional Use Permit for Wireless Telecommunications Facilities shall pay fines or penalties as set forth in **§36-161**.
- B) Notwithstanding anything in this Ordinance, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The City may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the City.

36-168.26. Default and/or Revocation.

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit, then the City shall notify the holder of the Conditional Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 36-168.25 and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the Conditional Use Permit is subject to revocation.

36-168.27. Removal of Wireless Telecommunications Facilities.

- A) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of Wireless Telecommunications Facilities.
- 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
 - 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization and the Conditional Use Permit may be revoked.
- B) If the City makes such a determination as noted in subsection (A) of this section, then the City shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.

- C) The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the City.
- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit holder has received notice, then the City may order officials or representatives of the City to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.
- E) If, the City removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the City may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- F) Notwithstanding anything in this Section to the contrary, the City may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Conditional Use Permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

36-168.28. Relief.

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance may request such, provided that the relief or exemption is contained in the submitted Application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

36-168.29. Periodic Regulatory Review by the City.

- A) The City may at any time conduct a review and examination of this entire Ordinance.
- B) If after such a periodic review and examination of this Ordinance, the City determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted, then the City may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the City, the City may repeal this entire Ordinance at any time.

- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the City may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Ordinance.

36-168.30. Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

36-168.31. Conflict with Other Laws.

Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this Ordinance shall apply.

36-168.32. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

36-168.33. Authority.

This local Ordinance is enacted pursuant to applicable authority granted by the State and federal government.

Section 7.11 WIRELESS COMMUNICATION FACILITIES

7.11.01. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the Village of (Alda, Cairo or Doniphan)'s authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The Village of (Alda, Cairo or Doniphan) finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the Village and its inhabitants. The Village also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Village and of significant benefit to the Village and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the Village's land use policies, the Village is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Ordinance is to minimize impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Village of (Alda, Cairo or Doniphan).

7.11.02. Title.

This Ordinance shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the Village of (Alda, Cairo or Doniphan).

7.11.03. Severability.

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

- B) Any Conditional Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Permit shall be void in total, upon determination by the Village .

7.11.04. Definitions.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A) "**Accessory Facility or Structure**" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

- B) **“Applicant”** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.
- C) **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
- D) **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
- E) **“Co-location”** means the use of an existing Tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed within 90 days (weather permitting) after the new tower is constructed.
- F) **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
- G) **“Completed Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.
- H) **“Council”** means the Village Council of the Village of (Alda, Cairo or Doniphan).
- I) **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- J) **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
- K) **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna, lightning protection device or strobe.
- L) **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

- M) **“NIER”** means Non-Ionizing Electromagnetic Radiation
- N) **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- O) **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’
- P) **“Personal Wireless Services”** or **“PWS”** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange and is also referred to as **“Personal Telecommunications Service”** or **“PCS”**
- Q) **“Repairs and Maintenance”** means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
- R) **“Conditional Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Wireless Telecommunications Facilities as granted or issued by the City.
- S) **“Stealth”** or **“Stealth Technology”** means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,
- T) **“State”** means the State of Nebraska.
- U) **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems
- V) **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities
- W) **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’
- X) **“Temporary”** means, temporary in relation to all aspects and components of Article XI of this ordinance, something intended to, or that does not exist for more than ninety (90) days.
- Y) **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
- Z) **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a

support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, specialized mobile radio (SMR), paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

7.11.05. Overall Policy and Desired Goals for Conditional Use Permits and Administrative Review for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the Village's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the Village hereby adopts an overall policy with respect to Conditional Use Permits and Administrative Review for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- A) Requiring a Conditional Use Permit for any new Wireless Telecommunications Facility
- B) Requiring Administrative Review for co-location or modification of a Wireless Telecommunications Facility that does not require a change in the height of the tower.
- C) Implementing an Application process for person(s) seeking a Conditional Use Permit for or Administrative Review of Wireless Telecommunications Facilities;
- D) Establishing a policy for examining an application for and issuing a Conditional Use Permit and Administrative Reviews for Wireless Telecommunications Facilities that is both fair and consistent.
- E) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers
- E) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- F) That in granting a Conditional Use Permit or permitting after Administrative Review, the Village has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the Village.

Comment [C1]: Administrative Review gives the opportunity to review the towers for safety and loading and forces the communication companies to consider sites as outlined by the preference of the city, village or county.

7.11.06. Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) Except as otherwise provided by this Ordinance no Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this Ordinance without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in

this section, no Conditional Use Permit shall be required for those non-commercial exceptions noted in §7.11.07.

- B) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this Ordinance. Relief from these regulations, for existing legally permitted Wireless Telecommunications Facilities, may be sought by the applicant as shown in section 7.11.28 of this ordinance.
- C) Any Repair and Maintenance of a Wireless Facility does not require an Application for a Conditional Use Permit.

7.11.07. Exclusions. The following shall be exempt from this Ordinance:

- A) The Village's fire, police, department of transportation or other public service facilities owned and operated by the local government.
- B) Any facilities expressly exempt from the Village's siting, building and permitting authority.
- C) Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.
- D) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.
- E) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

7.11.08. Conditional Use Permit Application and Other Requirements.

- A) All Applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Ordinance. The Village Council is the officially designated agency or body of the Village to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities. The Village may at its discretion delegate or designate other official agencies or officials of the Village to accept, review, analyze, evaluate and make recommendations to the Village Council with respect to the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities.

- B) The Village may reject applications not meeting the requirements stated herein or which are otherwise incomplete
- C) No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the Village , and the Conditional Use Permit has been issued.
- D) Any and all representations made by the Applicant to the Village on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the Village .
- E) An Application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
- F) The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
- G) The Applicant shall include a statement in writing:
 - 1) That the applicant’s proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the Village in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Village, State and Federal Laws, rules, and regulations;
 - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- H) Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a Registered Professional surveyor, engineer, architect and or other individual as necessary licensed in the State of Nebraska.
- I) In addition to all other required information as stated in this ordinance, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.
 - 1) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
 - 2) Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the Village. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
 - 3) The name, address and phone number of the person preparing the report;

Comment [C2]: This may differ based on what is being considered, survey, construction plans, stealth antennas, geo technical data etc..

- 4) The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;
 - 5) The 911 address and tax parcel number of the property;
 - 6) The Zoning District in which the property is situated;
 - 7) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
 - 8) The location of nearest residential structure;
 - 9) The location, size and height of all existing and proposed structures on the property which is the subject of the Application;
 - 10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
 - 11) The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
 - 12) The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;
 - 13) The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users
 - 14) A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - 15) The frequency, modulation and class of service of radio or other transmitting equipment;
 - 16) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
 - 17) Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;
 - 18) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
 - 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
 - 20) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design. The investigation, evaluation and design shall be prepared by a licensed professional.
- J) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application. If the analysis determines that the structure is within the approach or turning zone of the airport then approvals must be received from the local airport.

K) Application for New Tower

- 1) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the Village. Copies of written requests and responses for shared use shall be provided to the Village in the Application, along with any letters of rejection stating the reason for rejection.
- 2) In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Village. The Applicant shall inform the Village, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application.
- 3) The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:
 - a) The foreseeable number of FCC licenses available for the area;
 - b) The kind of Wireless Telecommunications Facilities site and structure proposed;
 - c) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
 - d) Available space on existing and approved Towers.
- 4) The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
 - a) Respond within 60 days to a request for information from a potential shared-use Applicant;
 - b) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
 - c) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less

depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.

- d) Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit.
- L) The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, Village, State and Federal structural requirements for loads, including wind and ice loads.
- M) If proposal is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.
- N) All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.
- O) If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:
 - 1) If a new Tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.
 - 2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the Village as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
 - 3) A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- P) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility

- Q) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This may include the utilization of stealth or concealment technology if required by the Village.
- R) All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with all Laws, Ordinances, rules and regulations of the Village, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate
- S) At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- T) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Village, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- U) A holder of a Conditional Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Village or other governmental entity or agency having jurisdiction over the applicant.
- V) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.
- W) An Applicant shall submit to the Village the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.
- X) The holder of a Conditional Use Permit shall notify the Village of any intended Modification of a Wireless Telecommunication Facility and shall apply to the Village to modify, relocate or rebuild a Wireless Telecommunications Facility.

7.11.09. Location of Wireless Telecommunications Facilities.

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (8) being the lowest priority.

- 1) On existing Towers or other structures on Village owned properties.
- 2) On existing Towers or other structures on other property in the Village
- 3) A new Tower on Village -owned properties;
- 4) A new Tower on properties in areas zoned for Industrial use
- 6) A new Tower on properties in areas zoned for Commercial use
- 7) A new Tower on properties in areas zoned for Agricultural use not planned for residential use in Comprehensive Plan
- 8) A new Tower on properties in areas zoned for Residential use

Comment [C3]: Need to decided on priorities. The Manufacturing, Commercial, Agricultural, Residential is obvious but how do we feel about cell sites on public land. This is a potential source of long term revenue for the communities. We could also eliminate the public provisions and just do this based on the zoning district.

- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the Village why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the Village may approve any site located within an area in the above list of priorities, provided that the Village finds that the proposed site is in the best interest of the health, safety and welfare of the Village and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Village may disapprove an Application for any of the following reasons.
- 1) Conflict with safety and safety-related codes and requirements;
 - 2) Conflict with the historic nature or character of a neighborhood or historical district;
 - 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
 - 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Village, or employees of the service provider or other service providers;
 - 5) Conflicts with the provisions of this Ordinance.

7.11.10. Shared Use of Wireless Telecommunications Facilities and Other Structures.

- A) The Village shall prefer Applicants to locate on existing Towers or others structures without increasing the height instead of the construction of a new Tower. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2)

miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.

- B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.
- C) Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the Village, to the extent practicable, unless good cause is shown.

7.11.11. Height of Telecommunications Tower(s).

- A) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Village, to the extent practicable, unless good cause is shown.
- B) No Tower constructed after the effective date of this Ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with Village, State, and/or any Federal statute, law, local law, Village Ordinance, code, rule or regulation.

7.11.12. Visibility of Wireless Telecommunications Facilities.

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law. Towers requiring lighting shall submit a request for relief from 7.11.11 (B) as allowed under §7.11.28 of this ordinance
- B) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.
- C) If lighting is required, Applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

7.11.13. Security of Wireless Telecommunications Facilities.

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A) All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B) Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

7.11.14. Signage.

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

7.11.15. Lot Size and Setbacks.

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

7.11.16. Retention of Expert Assistance and Reimbursement by Applicant.

- A) The Village may hire any consultant and/or expert necessary to assist the Village in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.
- B) An Applicant shall deposit with the Village funds sufficient to reimburse the Village for all reasonable costs of consultant and expert evaluation and consultation to the Village in connection with the review of any Application including where applicable, the lease negotiation, the pre - approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the Village shall precede the pre-application meeting. The Village will maintain a separate escrow account for all such funds. The Village's consultants/experts shall invoice the Village for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the Village, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Village before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the Village is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.
- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

7.11.17. Public Hearing and Notification Requirements.

- A) Prior to the approval of any Application for a Conditional Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the Village, notice of which shall be published in the newspaper general circulation in of the Village no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the Village may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within three hundred (300) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
- B) There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
- C) The Village shall schedule the Public Hearing referred to in Subsection (A) of this section once it finds the Application is complete, the Village, at any stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

7.11.18. Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) The Village will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The Village may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.
- C) After the Public Hearing and after formally considering the Application, the Village may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
- D) If the Village approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Village's action, and the Conditional Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the Village, such as site plan or zoning approvals, shall be required by the Village for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.
- E) If the Village denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the Village's action.

7.11.19. Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities.

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

- A) Such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the Village.
- B) Such Conditional Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Conditional Use Permit.

7.11.20. Application Fee.

At the time that a Person submits an Application for a Conditional Use Permit for a new Tower or an Administrative Review of an existing tower or structure, such Person shall pay a non-refundable application fee to the Village as set by the Village Fee Schedule.

Comment [C4]: Each entity will have to include conditional use permits for wireless communication facilities in their fee schedule. The consultants recommend \$5000 for a new tower and \$2500 for a co-location or Administrative Review nationally. Nebraska counties tend to make those fees \$3000 and \$1500.

7.11.21. Performance Security.

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the Village a bond, or other form of security acceptable to the Village as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the Village to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit.

7.11.22. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Ordinances and regulations and other applicable requirements, the Village may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

7.11.23. Liability Insurance for facilities located on Village owned property

- A) A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below

- 1) Commercial General Liability covering personal injuries, death and property damage:
 - \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - 2) Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
 - 3) Workers Compensation and Disability: Statutory amounts
- B) For a Wireless Telecommunications Facility on Village property, the Commercial General Liability insurance policy shall specifically include the Village and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at least forty five (45) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the Village at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the granting of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.

7.11.24. Indemnification.

- A) Any application for Wireless Telecommunication Facilities that is proposed for Village property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Village, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Village, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Village.
- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the Village itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities

7.11.25. Fines (Reference section 10.06)

- A) In the event of a violation of this Ordinance or any Conditional Use Permit issued pursuant to this Ordinance, the Village may prosecute the holder of the Conditional Use Permit for Wireless

Telecommunications Facilities shall pay fines or penalties as set forth in 10.06 of this Regulation and as allowed by State Statute.

- B) Notwithstanding anything in this Ordinance, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The Village may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the Village .

7.11.26. Default and/or Revocation.

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re -located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit, then the Village shall notify the holder of the Conditional Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 7.11.25 and if a violation is not corrected to the satisfaction of the Village in a reasonable period of time the Conditional Use Permit is subject to revocation.

7.11.27. Removal of Wireless Telecommunications Facilities.

- A) Under the following circumstances, the Village may determine that the health, safety, and welfare interests of the Village warrant and require the removal of Wireless Telecommunications Facilities.
- 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
 - 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization and the Conditional Use Permit may be revoked.
- B) If the Village makes such a determination as noted in subsection (A) of this section, then the Village shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the Village may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.
- C) The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the Village . However, if the owner of the property upon which the Wireless

Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the Village .

- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit holder has received notice, then the Village may order officials or representatives of the Village to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.
- E) If, the Village removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the Village may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- F) Notwithstanding anything in this Section to the contrary, the Village may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Conditional Use Permit, subject to the approval of the Village, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the Village. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Village may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

7.11.28. Relief.

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance may request such, provided that the relief or exemption is contained in the submitted Application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the Village in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Village, its residents and other service providers.

7.11.29. Periodic Regulatory Review by the Village.

- A) The Village may at any time conduct a review and examination of this entire Ordinance.
- B) If after such a periodic review and examination of this Ordinance, the Village determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted, then the Village may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Village, the Village may repeal this entire Ordinance at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the Village may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Ordinance.

7.11.30. Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

7.11.31. Conflict with Other Laws.

Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Village, State or Federal government, this Ordinance shall apply.

7.11.32. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

7.11.33. Authority.

This local Ordinance is enacted pursuant to applicable authority granted by the State and federal government.

Section 7.11 WIRELESS COMMUNICATION FACILITES

7.11.01. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the City of Wood River's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The City of Wood River finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the City's land use policies, the City is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Ordinance is to minimize impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Wood River.

7.11.02. Title.

This Ordinance shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the City of Wood River.

7.11.03. Severability.

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

- B) Any Conditional Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Permit shall be void in total, upon determination by the City.

7.11.04. Definitions.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A) "**Accessory Facility or Structure**" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

- B) **“Applicant”** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.
- C) **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
- D) **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
- E) **“Co-location”** means the use of an existing Tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed within 90 days (weather permitting) after the new tower is constructed.
- F) **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
- G) **“Completed Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.
- H) **“Council”** means the City Council of the City of Wood River.
- I) **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- J) **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
- K) **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna, lightning protection device or strobe.
- L) **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

- M) **“NIER”** means Non-Ionizing Electromagnetic Radiation
- N) **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- O) **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’
- P) **“Personal Wireless Services”** or **“PWS”** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange and is also referred to as **“Personal Telecommunications Service”** or **“PCS”**
- Q) **“Repairs and Maintenance”** means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
- R) **“Conditional Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Wireless Telecommunications Facilities as granted or issued by the City.
- S) **“Stealth”** or **“Stealth Technology”** means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,
- T) **“State”** means the State of Nebraska.
- U) **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems
- V) **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities
- W) **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’
- X) **“Temporary”** means, temporary in relation to all aspects and components of Article XI of this ordinance, something intended to, or that does not exist for more than ninety (90) days.
- Y) **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
- Z) **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a

support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, specialized mobile radio (SMR), paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

7.11.05. Overall Policy and Desired Goals for Conditional Use Permits and Administrative Review for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the City's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the City hereby adopts an overall policy with respect to Conditional Use Permits and Administrative Review for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- A) Requiring a Conditional Use Permit for any new Wireless Telecommunications Facility
- B) Requiring Administrative Review for co-location or modification of a Wireless Telecommunications Facility that does not require a change in the height of the tower.
- C) Implementing an Application process for person(s) seeking a Conditional Use Permit for or Administrative Review of Wireless Telecommunications Facilities;
- D) Establishing a policy for examining an application for and issuing a Conditional Use Permit, and Administrative Reviews for Wireless Telecommunications Facilities that is both fair and consistent.
- E) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers
- E) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- F) That in granting a Conditional Use Permit or permitting after Administrative Review, the City has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the City.

Comment [C1]: Administrative Review gives the opportunity to review the towers for safety and loading and forces the communication companies to consider sites as outlined by the preference of the city, village or county.

7.11.06. Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) Except as otherwise provided by this Ordinance no Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications

Facilities as of the effective date of this Ordinance without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Conditional Use Permit shall be required for those non-commercial exceptions noted in § 7.11.07.

- B) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this Ordinance. Relief from these regulations, for existing legally permitted Wireless Telecommunications Facilities, may be sought by the applicant as shown in section 7.11.28 of this ordinance.
- C) Any Repair and Maintenance of a Wireless Facility does not require an Application for a Conditional Use Permit.

7.11.07. Exclusions. The following shall be exempt from this Ordinance:

- A) The City's fire, police, department of transportation or other public service facilities owned and operated by the local government.
- B) Any facilities expressly exempt from the City's siting, building and permitting authority.
- C) Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.
- D) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.
- E) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

7.11.08. Conditional Use Permit Application and Other Requirements.

- A) All Applicants for a Conditional Use Permit for Wireless Telecommunication Facilities or any modification of such facility shall comply with the requirements set forth in this Ordinance. The City Council is the officially designated agency or body of the City to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities. The City may at its discretion delegate or designate other official agencies or officials of the City to accept, review, analyze, evaluate and make recommendations to the City Council with respect to the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities.

- B) The City may reject applications not meeting the requirements stated herein or which are otherwise incomplete
- C) No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the City, and the Conditional Use Permit has been issued.
- D) Any and all representations made by the Applicant to the City on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the City.
- E) An Application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
- F) The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
- G) The Applicant shall include a statement in writing:
 - 1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the City in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable City, State and Federal Laws, rules, and regulations;
 - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- H) Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a Registered Professional surveyor, engineer, architect and or other individual as necessary licensed in the State of Nebraska.
- I) In addition to all other required information as stated in this ordinance, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.
 - 1) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
 - 2) Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the City. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
 - 3) The name, address and phone number of the person preparing the report;

Comment [C2]: This may differ based on what is being considered, survey, construction plans, stealth antennas, geo technical data etc..

- 4) The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;
 - 5) The 911 address and tax parcel number of the property;
 - 6) The Zoning District in which the property is situated;
 - 7) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
 - 8) The location of nearest residential structure;
 - 9) The location, size and height of all existing and proposed structures on the property which is the subject of the Application;
 - 10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
 - 11) The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
 - 12) The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;
 - 13) The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users
 - 14) A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - 15) The frequency, modulation and class of service of radio or other transmitting equipment;
 - 16) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
 - 17) Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;
 - 18) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
 - 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
 - 20) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design. The investigation, evaluation and design shall be prepared by a licensed professional.
- J) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application. If the analysis determines that the structure is within the approach or turning zone of the airport then approvals must be received from the local airport.
- K)
- L) Application for New Tower

- 1) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the City in the Application, along with any letters of rejection stating the reason for rejection.
- 2) In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the City. The Applicant shall inform the City, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application.
- 3) The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:
 - a) The foreseeable number of FCC licenses available for the area;
 - b) The kind of Wireless Telecommunications Facilities site and structure proposed;
 - c) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
 - d) Available space on existing and approved Towers.
- 4) The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
 - a) Respond within 60 days to a request for information from a potential shared-use Applicant;
 - b) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
 - c) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land

costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.

- d) Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit.
- L) The Applicant shall provide certification with documentation (structural analysis as provided by a professional engineer licensed in the State of Nebraska) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, City, State and Federal structural requirements for loads, including wind and ice loads.
- M) If proposal is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.
- N) All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.
- O) If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:
 - 1) If a new Tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.
 - 2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the City as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
 - 3) A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- P) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility

- Q) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This may include the utilization of stealth or concealment technology if required by the City.
- R) All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with all Laws, Ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate
- S) At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- T) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- U) A holder of a Conditional Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- V) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.
- W) An Applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.
- X) The holder of a Conditional Use Permit shall notify the City of any intended Modification of a Wireless Telecommunication Facility and shall apply to the City to modify, relocate or rebuild a Wireless Telecommunications Facility.

7.11.09. Location of Wireless Telecommunications Facilities.

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (8) being the lowest priority.

- 1) On existing Towers or other structures on City owned properties.
- 2) On existing Towers or other structures on other property in the city
- 3) A new Tower on City-owned properties;
- 4) A new Tower on properties in areas zoned for Industrial use
- 6) A new Tower on properties in areas zoned for Commercial use
- 7) A new Tower on properties in areas zoned for Agricultural use not planned for residential use in Comprehensive Plan
- 8) A new Tower on properties in areas zoned for Residential use

Comment [C3]: Need to decided on priorities. The Manufacturing, Commercial, Agricultural, Residential is obvious but how do we feel about cell sites on public land. This is a potential source of long term revenue for the communities. We could also eliminate the public provisions and just do this based on the zoning district.

- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the City why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an Application for any of the following reasons.
- 1) Conflict with safety and safety-related codes and requirements;
 - 2) Conflict with the historic nature or character of a neighborhood or historical district;
 - 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
 - 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers;
 - 5) Conflicts with the provisions of this Ordinance.

7.11.10. Shared Use of Wireless Telecommunications Facilities and Other Structures.

- A) The City shall prefer Applicants to locate on existing Towers or others structures without increasing the height instead of the construction of a new Tower. The Applicant shall submit a

comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.

- B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.
- C) Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.

7.11.11. Height of Telecommunications Tower(s).

- A) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.
- B) No Tower constructed after the effective date of this Ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with City, State, and/or any Federal statute, law, local law, City Ordinance, code, rule or regulation.

7.11.12. Visibility of Wireless Telecommunications Facilities.

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law. Towers requiring lighting shall submit a request for relief from 7.11.11 (B) as allowed under §7.11.28 of this ordinance
- B) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.
- C) If lighting is required, Applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

7.11.13. Security of Wireless Telecommunications Facilities.

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A) All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B) Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

7.11.14. Signage.

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

7.11.15. Lot Size and Setbacks.

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

7.11.16. Retention of Expert Assistance and Reimbursement by Applicant.

- A) The City may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.
- B) An Applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the City in connection with the review of any Application including where applicable, the lease negotiation, the pre -approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the City shall precede the pre-application meeting. The City will maintain a separate escrow account for all such funds. The City's consultants/experts shall invoice the City for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the City before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.
- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

7.11.17. Public Hearing and Notification Requirements.

- A) Prior to the approval of any Application for a Conditional Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the City, notice of which shall be published in the newspaper general circulation in of the City no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the City may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within three hundred (300) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
- B) There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
- C) The City shall schedule the Public Hearing referred to in Subsection (A) of this section once it finds the Application is complete, the City, at any stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

7.11.18. Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) The City will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The City may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.
- C) After the Public Hearing and after formally considering the Application, the City may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
- D) If the City approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the City's action, and the Conditional Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the City, such as site plan or zoning approvals, shall be required by the City for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.
- E) If the City denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the City's action.

7.11.19. Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities.

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

- A) Such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the City.
- B) Such Conditional Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Conditional Use Permit.

7.11.20. Application Fee.

At the time that a Person submits an Application for a Conditional Use Permit for a new Tower or an Administrative Review of an existing tower or structure, such Person shall pay a non-refundable application fee to the City as set by the City Fee Schedule.

Comment [C4]: Each entity will have to include conditional use permits for wireless communication facilities in their fee schedule. The consultants recommend \$5000 for a new tower and \$2500 for a co-location or Administrative Review nationally. Nebraska counties tend to make those fees \$3000 and \$1500.

7.11.21. Performance Security.

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit.

7.11.22. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

7.11.23. Liability Insurance for facilities located on city owned property

- A) A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below

- 1) Commercial General Liability covering personal injuries, death and property damage:
\$1,000,000 per occurrence/\$2,000,000 aggregate;
 - 2) Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
 - 3) Workers Compensation and Disability: Statutory amounts
- B) For a Wireless Telecommunications Facility on City property, the Commercial General Liability insurance policy shall specifically include the City and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least forty five (45) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the granting of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

7.11.24. Indemnification.

- A) Any application for Wireless Telecommunication Facilities that is proposed for City property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities

7.11.25. Fines (Reference section 10.06)

- A) In the event of a violation of this Ordinance or any Conditional Use Permit issued pursuant to this Ordinance, the City may prosecute the holder of the Conditional Use Permit for Wireless

Telecommunications Facilities shall pay fines or penalties as set forth in section 10.06 of this Regulation and as allowed by State Statute.

- B) Notwithstanding anything in this Ordinance, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The City may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the City.

7.11.26. Default and/or Revocation.

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit, then the City shall notify the holder of the Conditional Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 7.11.25 and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the Conditional Use Permit is subject to revocation.

7.11.27. Removal of Wireless Telecommunications Facilities.

- A) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of Wireless Telecommunications Facilities.
 - 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
 - 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization and the Conditional Use Permit may be revoked.
- B) If the City makes such a determination as noted in subsection (A) of this section, then the City shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.
- C) The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the City.

- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit holder has received notice, then the City may order officials or representatives of the City to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.
- E) If, the City removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the City may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- F) Notwithstanding anything in this Section to the contrary, the City may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Conditional Use Permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

7.11.28. Relief.

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance may request such, provided that the relief or exemption is contained in the submitted Application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

7.11.29. Periodic Regulatory Review by the City.

- A) The City may at any time conduct a review and examination of this entire Ordinance.
- B) If after such a periodic review and examination of this Ordinance, the City determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted, then the City may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the City, the City may repeal this entire Ordinance at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the City may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Ordinance.

7.11.30. Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

7.11.31. Conflict with Other Laws.

Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this Ordinance shall apply.

7.11.32. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

7.11.33. Authority.

This local Ordinance is enacted pursuant to applicable authority granted by the State and federal government.

Section 6.01 WIRELESS COMMUNICATION FACILITES

6.01.01. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the County of Hall's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The County of Hall finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the County and its inhabitants. The County also recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to the County and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the County's land use policies, the County is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Regulation is to minimize impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the County of Hall.

6.01.02. Title.

This Regulation shall be known and cited as the Wireless Telecommunications Facilities Siting Regulation for the County of Hall.

6.01.03. Severability.

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Resolution or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Resolution, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

- B) Any Conditional Use Permit issued under this Regulation shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Permit shall be void in total, upon determination by the County.

6.01.04. Definitions.

For purposes of this Regulation, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A) "**Accessory Facility or Structure**" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

- B) **“Applicant”** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.
- C) **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
- D) **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
- E) **“Board”** means the County Board of Supervisors for Hall County.
- F) **“Co-location”** means the use of an existing Tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed within 90 days (weather permitting) after the new tower is constructed.
- G) **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
- H) **“Completed Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.
- I) **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- J) **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
- K) **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna, lightning protection device or strobe.
- L) **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

- M) **“NIER”** means Non-Ionizing Electromagnetic Radiation
- N) **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- O) **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’
- P) **“Personal Wireless Services”** or **“PWS”** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange and is also referred to as **“Personal Telecommunications Service”** or **“PCS”**
- Q) **“Repairs and Maintenance”** means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
- R) **“Conditional Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Wireless Telecommunications Facilities as granted or issued by the City.
- S) **“Stealth”** or **“Stealth Technology”** means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,
- T) **“State”** means the State of Nebraska.
- U) **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems
- V) **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities
- W) **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’
- X) **“Temporary”** means, temporary in relation to all aspects and components of Article XI of this ordinance, something intended to, or that does not exist for more than ninety (90) days.
- Y) **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
- Z) **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a

support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, specialized mobile radio (SMR), paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

6.01.05. Overall Policy and Desired Goals for Conditional Use Permits and Administrative Review for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the County's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Regulation, the County hereby adopts an overall policy with respect to Conditional Use Permits and Administrative Review for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- A) Requiring a Conditional Use Permit for any new Wireless Telecommunications Facility
- B) Requiring Administrative Review for co-location or modification of a Wireless Telecommunications Facility that does not require a change in the height of the tower.
- C) Implementing an Application process for person(s) seeking a Conditional Use Permit for or Administrative Review of Wireless Telecommunications Facilities;
- D) Establishing a policy for examining an application for and issuing a Conditional Use Permit, and Administrative Reviews for Wireless Telecommunications Facilities that is both fair and consistent.
- E) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers
- E) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- F) That in granting a Conditional Use Permit or permitting after Administrative Review, the County has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the County.

Comment [C1]: Administrative Review gives the opportunity to review the towers for safety and loading and forces the communication companies to consider sites as outlined by the preference of the city, village or county,

6.01.06. Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) Except as otherwise provided by this Regulation no Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this Regulation without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Conditional Use Permit shall be required for those non-commercial exceptions noted in §6.01.07.
- B) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this Regulation shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this Regulation. Relief from these regulations, for existing legally permitted Wireless Telecommunications Facilities, may be sought by the applicant as shown in section 6.01.28 of this Regulation.
- C) Any Repair and Maintenance of a Wireless Facility does not require an Application for a Conditional Use Permit.

6.01.07. Exclusions. The following shall be exempt from this Regulation:

- A) The County’s fire, police, department of transportation or other public service facilities owned and operated by the local government.
- B) Any facilities expressly exempt from the County’s siting, building and permitting authority.
- C) Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.
- D) Facilities exclusively for private, non-commercial radio and television reception and private citizen’s bands, licensed amateur radio and other similar non-commercial Telecommunications.
- E) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

6.01.08. Conditional Use Permit Application and Other Requirements.

- A) All Applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Regulation. The County Council is the officially designated agency or body of the County to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities. The County may

at its discretion delegate or designate other official agencies or officials of the County to accept, review, analyze, evaluate and make recommendations to the County Council with respect to the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities.

- B) The County may reject applications not meeting the requirements stated herein or which are otherwise incomplete
- C) No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the County, and the Conditional Use Permit has been issued.
- D) Any and all representations made by the Applicant to the County on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the County.
- E) An Application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
- F) The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
- G) The Applicant shall include a statement in writing:
 - 1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, Regulations, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations;
 - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- H) Where a certification is called for in this Regulation, such certification shall bear the signature and seal of a Registered Professional surveyor, engineer, architect and or other individual as necessary licensed in the State of Nebraska.
- I) In addition to all other required information as stated in this Regulation, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.
 - 1) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;

Comment [C2]: This may differ based on what is being considered, survey, construction plans, stealth antennas, geo technical data etc..

- 2) Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the County. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
- 3) The name, address and phone number of the person preparing the report;
- 4) The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;
- 5) The 911 address and tax parcel number of the property;
- 6) The Zoning District in which the property is situated;
- 7) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- 8) The location of nearest residential structure;
- 9) The location, size and height of all existing and proposed structures on the property which is the subject of the Application;
- 10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- 11) The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
- 12) The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;
- 13) The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users
- 14) A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- 15) The frequency, modulation and class of service of radio or other transmitting equipment;
- 16) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
- 17) Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;
- 18) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
- 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
- 20) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design. The investigation, evaluation and design shall be prepared by a licensed professional.

Comment [CoG13]: This was added.

- J) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any

related correspondence shall be provided with the application. If the analysis determines that the structure is within the approach or turning zone of the airport then approvals must be received from the local airport.

K) Application for New Tower

- 1) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the County. Copies of written requests and responses for shared use shall be provided to the County in the Application, along with any letters of rejection stating the reason for rejection.
- 2) In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the County. The Applicant shall inform the County, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application.
- 3) The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:
 - a) The foreseeable number of FCC licenses available for the area;
 - b) The kind of Wireless Telecommunications Facilities site and structure proposed;
 - c) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
 - d) Available space on existing and approved Towers.
- 4) The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
 - a) Respond within 60 days to a request for information from a potential shared-use Applicant;

- b) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
 - c) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.
 - d) Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit.
- L) The Applicant shall provide certification with documentation (structural analysis as provided by a professional engineer licensed in the State of Nebraska) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads.
- M) If proposal is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.
- N) All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.
- O) If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:
- 1) If a new Tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.
 - 2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the County as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.

- 3) A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- P) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility
- Q) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This may include the utilization of stealth or concealment technology if required by the County.
- R) All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with all Laws, Regulations, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate
- S) At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- T) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the County, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- U) A holder of a Conditional Use Permit granted under this Regulation shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.
- V) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.
- W) An Applicant shall submit to the County the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.

- X) The holder of a Conditional Use Permit shall notify the County of any intended Modification of a Wireless Telecommunication Facility and shall apply to the County to modify, relocate or rebuild a Wireless Telecommunications Facility.

6.01.09. Location of Wireless Telecommunications Facilities.

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (8) being the lowest priority.

- 1) On existing Towers or other structures on County owned properties.
- 2) On existing Towers or other structures on other property in the County
- 3) A new Tower on County-owned properties;
- 4) A new Tower on properties in areas zoned for Industrial use
- 6) A new Tower on properties in areas zoned for Commercial use
- 7) A new Tower on properties in areas zoned for Agricultural use not planned for residential use in Comprehensive Plan
- 8) A new Tower on properties in areas zoned for Residential use

- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the County why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an Application for any of the following reasons.
 - 1) Conflict with safety and safety-related codes and requirements;
 - 2) Conflict with the historic nature or character of a neighborhood or historical district;
 - 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;

Comment [C4]: Need to decided on priorities. The Manufacturing, Commercial, Agricultural, Residential is obvious but how do we feel about cell sites on public land. This is a potential source of long term revenue for the communities. We could also eliminate the public provisions and just do this based on the zoning district.

- 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service providers;
- 5) Conflicts with the provisions of this Regulation.

6.01.10. Shared Use of Wireless Telecommunications Facilities and Other Structures.

- A) The County shall prefer Applicants to locate on existing Towers or others structures without increasing the height instead of the construction of a new Tower. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.
- B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.
- C) Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.

6.01.11. Height of Telecommunications Tower(s).

- A) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.
- B) No Tower constructed after the effective date of this Regulation, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with County, State, and/or any Federal statute, law, local law, County Regulation, code, rule or regulation.

6.01.12. Visibility of Wireless Telecommunications Facilities.

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law. Towers requiring lighting shall submit a request for relief from 6.01.11 (B) as allowed under 6.01.28 of this Regulation
- B) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Regulation.
- C) If lighting is required, Applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

6.01.13. Security of Wireless Telecommunications Facilities.

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A) All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B) Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

6.01.14. Signage.

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

6.01.15. Lot Size and Setbacks.

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

6.01.16. Retention of Expert Assistance and Reimbursement by Applicant.

- A) The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.
- B) An Applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any Application including where applicable, the lease negotiation, the pre - approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the County shall precede the pre-application meeting. The County will maintain a separate escrow account for all such funds. The County's consultants/experts shall invoice the County for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the County, replenish said escrow account so that

it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the County is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.

- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

6.01.17. Public Hearing and Notification Requirements.

- A) Prior to the approval of any Application for a Conditional Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the County, notice of which shall be published in the newspaper general circulation in of the County no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the County may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within three hundred (300) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
- B) There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
- C) The County shall schedule the Public Hearing referred to in Subsection (A) of this section once it finds the Application is complete, the County, at any stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

6.01.18. Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) The County will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The County may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.
- C) After the Public Hearing and after formally considering the Application, the County may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
- D) If the County approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the County's action, and the Conditional Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the

County, such as site plan or zoning approvals, shall be required by the County for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.

- E) If the County denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the County's action.

6.01.19. Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities.

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

- A) Such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the County.
- B) Such Conditional Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Regulation after prior written notice to the holder of the Conditional Use Permit.

6.01.20. Application Fee.

At the time that a Person submits an Application for a Conditional Use Permit for a new Tower or an Administrative Review of an existing tower or structure, such Person shall pay a non-refundable application fee to the County as set by the County Fee Schedule.

Comment [C5]: Each entity will have to include conditional use permits for wireless communication facilities in their fee schedule. The consultants recommend \$5000 for a new tower and \$2500 for a co-location or Administrative Review nationally. Nebraska counties tend to make those fees \$3000 and \$1500.

6.01.21. Performance Security.

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Regulation and conditions of any Conditional Use Permit issued pursuant to this Regulation. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit.

6.01.22. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Regulations and regulations and other applicable requirements, the County may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

6.01.23. Liability Insurance for facilities located on County owned property

- A) A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below
 - 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - 2) Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
 - 3) Workers Compensation and Disability: Statutory amounts
- B) For a Wireless Telecommunications Facility on County property, the Commercial General Liability insurance policy shall specifically include the County and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least forty five-(45) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the County at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the grant ing of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.

6.01.24. Indemnification.

- A) Any application for Wireless Telecommunication Facilities that is proposed for County property, pursuant to this Regulation, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County.

- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities

6.01.25. Fines (Reference section 10.03)

- A) In the event of a violation of this Resolution or any Conditional Use Permit issued pursuant to this Ordinance, the County may prosecute the holder of the Conditional Use Permit for Wireless Telecommunications Facilities shall pay fines or penalties as set forth in section 10.03 of this Regulation and as allowed by State Statute.
- B) Notwithstanding anything in this Regulation, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Regulation or any section of this Regulation. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The County may also seek injunctive relief to prevent the continued violation of this Regulation, without limiting other remedies available to the County.

6.01.26. Default and/or Revocation.

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Regulation or of the Conditional Use Permit, then the County shall notify the holder of the Conditional Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 7.11.25 and if a violation is not corrected to the satisfaction of the County in a reasonable period of time the Conditional Use Permit is subject to revocation.

6.01.27. Removal of Wireless Telecommunications Facilities.

- A) Under the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require the removal of Wireless Telecommunications Facilities.
 - 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
 - 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization and the Conditional Use Permit may be revoked.
- B) If the County makes such a determination as noted in subsection (A) of this section, then the County shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be

removed, the County may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.

- C) The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the County. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the County.
- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit holder has received notice, then the County may order officials or representatives of the County to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.
- E) If, the County removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the County may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- F) Notwithstanding anything in this Section to the contrary, the County may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Conditional Use Permit, subject to the approval of the County, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the County. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the County may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

6.01.28. Relief.

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Regulation may request such, provided that the relief or exemption is contained in the submitted Application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the County in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the County, its residents and other service providers.

6.01.29. Periodic Regulatory Review by the County.

- A) The County may at any time conduct a review and examination of this entire Regulation.

- B) If after such a periodic review and examination of this Regulation, the County determines that one or more provisions of this Regulation should be amended, repealed, revised, clarified, or deleted, then the County may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the County, the County may repeal this entire Regulation at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the County may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Regulation.

6.01.30. Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

6.01.31. Conflict with Other Laws.

Where this Regulation differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, this Regulation shall apply.

6.01.32. Effective Date.

This Regulation shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

6.01.33. Authority.

This local Regulation is enacted pursuant to applicable authority granted by the State and federal government.