



# City of Grand Island

Tuesday, January 28, 2020

Council Session

## Item F-8

**#9762 - Consideration of Amending Chapter 34 of the Grand Island City Code Relative to Small Cell Antenna's in Public Right-of-Way**

Staff Contact: Chad Nabity

# Council Agenda Memo

**From:** City Staff (Public Works, Planning, Building, Administration, Utilities, Legal)

**Meeting:** January 28, 2020

**Subject:** Proposed Changes to Chapter 34 Telecommunication and Public Transportation

**Presenter(s):** Chad Nabity, AICP Planning Director

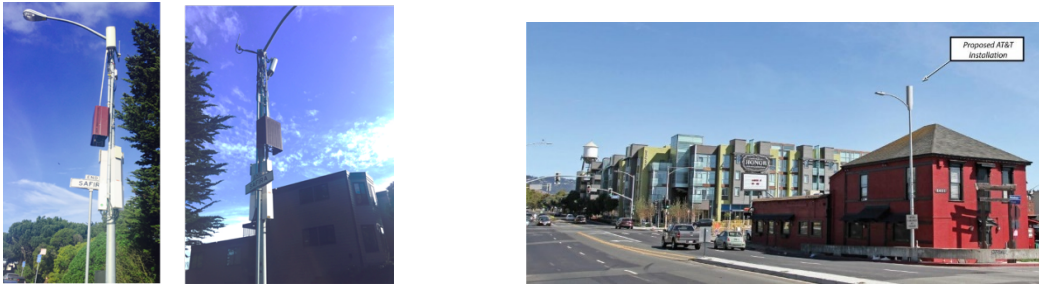
## Background

Since late 2018 both the Federal Communications Commission (FCC) and the State of Nebraska have made changes to the rules and regulations for the placement of private small cell wireless technology in the public rights-of-way. City staff from multiple departments that work in or with the right-of-way and regulations have worked with Bob Duchen of River Oaks Communications out of Colorado Springs, Colorado to craft regulations that create a workable environment for Cellular companies wishing to operate in Grand Island while protecting the public use of the right-of-way.

## Discussion

Both the FCC and the State of Nebraska have made it clear through the exercise of their regulatory powers that small wireless facilities are a priority. They have granted powers to these private companies to utilize the public right-of-way for commercial purpose. Staff from the City of Grand Island is recommending the attached amendments to Chapter 34 Telecommunication and Public Transportation to layout a framework and process for permitting small wireless facilities in the public right-of-way on both existing pole with an order of preference outlined by the City and on new poles that may be constructed in the right-of-way.

A Small Wireless Facility is defined as: *a wireless facility that meets each of the following conditions: (1) The facilities (a) are mounted on structures fifty feet or less in height including the antennas or (b) are mounted on structures no more than ten percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than twenty-eight cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. part 17, as such regulation existed on January 1, 2019; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and (6) the facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.*



*Pictures of Small Wireless Facilities*

These facilities will fit on a typical light pole and we have permitted several of them throughout the city over the past two or three years. We are anticipating that there will be an increased demand for these facilities as cellular companies seek to densify their signal coverage and begin to introduce 5G technologies. Some estimates suggest that companies will need up to 110 antennas per square mile to achieve coverage that will permit 5G connectivity.

The proposed regulations balance the federal and state requirements to allow these facilities within the public right-of-way and the management of that right-of-way by the City on behalf of the public. City staff has identified these as preferred pole locations: existing street lights, relocated street lights, replacement of street light (with a pole of dual functionality), and the following locations as permitted with additional site analysis provide by the applicant: new poles, electric distribution poles if they can meet the attachment requirements, traffic control signal poles.

The attached ordinance will be inserted into Chapter 34 in sections that are currently reserved and the ordinance will be renumbered accordingly.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve the proposed changes as presented.

## **Sample Motion**

Move to approve as recommended.

ORDINANCE NO.9762

An ordinance to amend Chapter 34 of Grand Island City Code; to amend Article II adding Sections 34-75 thru 34-87; to clarify and/or make general corrections to various code sections, to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

**Article II. Wireless Communication Facilities**

**§34-75. Purpose**

The provisions of this Article shall be known as the Wireless Communication Facilities regulations. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless communication facilities in locations that have significant adverse effects and cause irreparable harm. It is further the purpose of these provisions:

(A) To protect the community’s visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the City’s goal to minimize the visual impact of wireless communication facilities on the community, particularly in and near residential zoning districts and historic districts and landmarks;

(B) To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Grand Island community, and to reasonably regulate the development and operation of wireless communication facilities within the City to the extent permitted under state and federal law;

(C) To minimize the impact of wireless communication facilities by establishing standards for siting design;

(D) To preserve the opportunity for continued and growing service from the wireless industry;

(E) To accommodate the growing consumer need and demand for wireless communication services;

(F) To establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of wireless transmission equipment, to provide advanced communication services to the City, its residents, businesses and the community at large;

(G) To ensure City zoning regulations are applied consistently with federal and state telecommunications laws, rules, regulations and controlling court decisions;

(H) To provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or

Approved as to Form	☐ _____
January 24, 2020	☐ City Attorney

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(3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission; and

(I) To incorporate the legislative findings and declarations in Nebraska Revised Statute 86-1202.

**§34-76. Definitions**

All terms in this Article which are not specifically defined herein shall be construed in accordance with the Communications Act of 1934, the Telecommunications Act of 1996 and the Orders, Rules and Regulations of the Federal Communications Commission. As used in this Article, the following terms shall have the meanings set forth below:

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Antenna array means a single or group of antenna elements, not including small wireless facility antennas, and associated mounting hardware, transmission lines, remote radio units, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving wireless communication signals.

Antenna support structure means any building or structure other than a tower which can be used for the location of wireless communication facilities.

Applicable codes means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with the Small Wireless Facilities Deployment Act and to the extent such codes have been adopted by the authority and are generally applicable in the jurisdiction.

Applicant means any person who submits an application and is a wireless provider.

Application means a written request submitted by an applicant to an authority (1) for a permit to collocate small wireless facilities on an existing utility pole or wireless support structure or (2) for a permit for approval for the installation, modification, or replacement of a utility pole to support the installation of a small wireless facility.

Authority means the State of Nebraska or any agency, county, city, village, or other political subdivision thereof, except as otherwise excluded herein. Authority does not include public power suppliers, state courts having jurisdiction over an authority, or an entity that does not have zoning or permit-granting authority.

Authority pole means a utility pole owned, managed, or operated by or on behalf of an authority.

Collocate or collocation means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a wireless support structure or utility pole.

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Collocate or collocation does not include the installation of a new utility pole or new wireless support structure in the right-of-way.

Communications facility means the set of equipment and network components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), as such section existed on January 1, 2019, a telecommunications carrier as defined in 47 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, or a wireless services provider, to provide communications services, including cable service as defined in 47 U.S.C. 153(8), as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, wireless services, or other one-way or two-way communications service.

Communications network means a network used to provide communications service.

Communications service means a cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, or a wireless service.

Communications service provider means a cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, as such sections existed on January 1, 2019. Communications service provider includes a wireless provider.

Decorative pole means an authority pole that is specially designed and placed for aesthetic purposes.

Distributed Antenna System or DAS means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

Electric distribution pole means a pole and wires that carry approximately 14,000 volts.

Electric transmission pole means a pole and wires that carry 69,000 volts or more.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Fee means a one-time, nonrecurring charge.

Historic district means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with Stipulation VI.D.1.a (i)-(v) of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission codified at 47 C.F.R. part 1, Appendix C, as such regulation existed on January 1, 2019, or designated pursuant to state historic preservation law if such designation exists at the time of application.

Law means federal, state, or local law, statute, common law, code, rule, regulation, order, resolution or ordinance.

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Macro cell means an antenna or antennas mounted on or in a tower, ground-based mast, rooftops or structures, at a height that provides coverage to the surrounding area, excluding small wireless facilities and distributed antenna systems.

Microwireless facility means a small wireless facility that is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height and with any exterior antenna no longer than eleven inches.

Permit means a written authorization required by an authority to perform an action, initiate, continue, or complete installation of a small wireless facility on an existing utility pole or attached to an existing wireless support structure, or to install, modify, or replace a utility pole to support installation of a small wireless facility.

Person means an individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization, including an authority.

Public power supplier means a public power district or any other governmental entity providing electric service. Public power supplier includes a municipal electric utility or a rural public power supplier.

Rate means a recurring charge.

Right-of-way means the area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in section 39-1302, the National System of Interstate and Defense Highways, or a private easement.

Rural public power supplier means a public power district, a public power and irrigation district, an electric cooperative, or an electric membership association, that does not provide electric service to any city of the metropolitan class, city of the primary class, or city of the first class.

Small wireless facility means a wireless facility that meets each of the following conditions: (1) The facilities (a) are mounted on structures fifty feet or less in height including the antennas or (b) are mounted on structures no more than ten percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than twenty-eight cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. part 17, as such regulation existed on January 1, 2019; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and (6) the facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.

Street light means, for purposes of this Article, poles used or to be used for the City's lighting in the right-of-way and City parks, and street lights in other areas as may be approved by the City. The term street lights includes non-standard street lights; however, the

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term does not include traffic signal poles, electric transmission and distribution poles, or light poles for sports fields or arenas, stadium lighting or other lighting of any kind, and does not pertain to poles or other structures owned by others regardless of whether maintained by the City for lighting or any other purpose.

Technically feasible means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location, can be implemented without a reduction in the functionality of the small wireless facility.

Traffic signal means a set of automatically operated colored lights, typically red, amber, and green, for controlling traffic at road intersections and crosswalks. Traffic control signals are devices placed along, beside, or above a roadway to guide, warn, and regulate the flow of traffic, which includes motor vehicles, motorcycles, bicycles, pedestrians and other road users.

Transmission equipment means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, microwave dishes, coaxial or fiber-optic cable, and regular and backup power supplies. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Utility pole means a pole located in the right-of-way that is used for wireline communications, lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right-of-way. Utility pole does not include (1) wireless support structures, (2) any transmission infrastructure owned or operated by a public power supplier or rural public power supplier, and (3) any distribution or communications infrastructure owned or operated by a rural public power supplier. Notwithstanding the mandatory inclusion of this definition by the Small Wireless Facilities Deployment Act, for purposes of this Article, the City strongly discourages the placement of small wireless facilities on the vertical portion of support structures for traffic control signals for public welfare and safety reasons.

Utility support structure means utility poles or utility towers supporting electrical, telephone, cable or other similar facilities.

Wireless Communication Facilities or WCF means equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of a group of antennas, a tower or base station, transmission cables and other transmission equipment, backup power supplies, power transfer switches, cut-off switches, electric meters, coaxial cables, fiber optic cables, wires, telecommunications demarcation boxes and related materials and equipment and an equipment enclosure or cabinets including small wireless facilities.



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Wireless facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular power supply, and small back-up battery, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include (a) the structure or improvements on, under, or within the equipment which is collocated, (b) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to, or directly associated with, a particular antenna, or (c) a wireline backhaul facility.

Wireless infrastructure provider means any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

Wireless provider means a wireless services provider or a wireless infrastructure provider when acting as a coapplicant for a wireless services provider.

Wireless services means any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.

Wireless services provider means a person who provides wireless services.

Wireless support structure means a structure such as a guyed or self-supporting tower, billboard, building, or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of small wireless facilities. Wireless support structure does not include a utility pole.

Wireline backhaul facility means an above-ground or underground facility used to transport communications services from a wireless facility to a communications network.

**§34-77. Applicability**

(A) Public Power Supplier Poles: A public power supplier shall not be required to allow the collocation of small wireless facilities on utility poles owned, operated, or managed by a public power supplier except pursuant to a negotiated pole attachment agreement containing reasonable and nondiscriminatory terms and conditions, including, but not limited to, applicable rates, and the permit, operational, and safety requirements of the public power supplier. The City is a public power supplier.

(B) Annual Rate for Collocation on Public Power Supplier Poles: The annual pole attachment rate for the collocation of a small wireless facility supported by or installed on a utility pole owned, operated, or managed by a public power supplier shall be fair, reasonable, nondiscriminatory, cost-based, and set by the board of such public power supplier in accordance with section 70-655.

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(C) All new antennas, DAS and small wireless facilities in all zoning districts shall be subject to these regulations.

(D) A Tower Development Permit and Conditional Use Permit are required if a pole is to be located outside of the right-of-way.

(E) New antenna arrays meeting the requirements of §34-81 are permitted outright.

(F) DAS and small wireless facilities are permitted uses pursuant to §34-77(L).

(G) Antennas attached to distribution poles and street light poles in the public right-of-way shall not extend more than ten (10) feet above the highest point of the pole structure and may be installed: 1) when permitted by the pole owner's franchise; or 2) by amendment to the pole owner's franchise or right-of way use easement and consent of the City upon payment of reasonable compensation for use of the right-of-way.

(H) Preexisting antennas shall not be required to meet the requirements of this Article unless modified as described by this Article.

(I) The following are exempt from this Article:

(1) FCC licensed amateur (ham) radio facilities;

(2) Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one (1) meter in diameter;

(3) A WCF installed upon the declaration of a state of emergency by the federal, state or local government, or a written determination of public necessity by the City; except that such facility must comply with all federal and state requirements. The WCF shall be exempt from the provisions of this Article for up to one month after the duration of the state of emergency;

(4) A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WCF shall be exempt from the provisions of this Article for up to two weeks before and one week after the duration of the special event;

(5) Other temporary, commercial WCFs installed for a period of up to ninety (90) days, subject to the City's discretion; provided that such temporary WCF will comply with applicable setbacks and height requirements;

(6) Antennas attached to existing structures (such as commercial buildings, houses or apartments) for Internet purposes and uses, solely for occupants of the building, for which the antennas are attached as long as the height limitations of the zoning district are not exceeded and the antenna design is satisfactory to the City; and

(7) Routine maintenance and repair of antennas and replacement of antennas so long as the replacement antennas are of similar design, size, type, height, weight and color. Applicable building permits may be required for antenna replacement.

(J) Pole-Mounted Equipment: All pole-mounted transmission equipment shall be mounted as close as technically possible to the pole so as to reduce the overall visual profile to the maximum extent feasible subject to applicable safety codes.

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(K) License or Agreement: For all WCFs to be located within the right-of-way, prior to submitting for a permit, the applicant must have a valid municipal agreement, license, franchise or exemption otherwise granted by applicable law. Prior to the installation or construction of a WCF within the right-of-way or a utility easement, the registrant or provider must notify all utilities located within such right-of-way regarding the use of the right-of-way or easement.

(L) Subject to the other requirements of this Article, Distributed Antenna Systems and small cells in the right-of-way are subject to approval via permits and administrative review by the City Administrator for use outside of the right-of-way and the Public Works Department for use inside of the right-of-way unless their installation requires the construction of a new pole exceeding the maximum height limitation of the underlying zoning district. A permit is required for replacement utility support structures.

(M) Use of Street Lights: For public safety and welfare considerations, the City strongly discourages wireless providers from placing small wireless facilities on any poles (street light, traffic signal or otherwise) located at an intersection having traffic control signals. Instead, the City encourages wireless providers to place small wireless facilities on street lights elsewhere in the right-of-way. The City also encourages wireless providers to place small wireless facilities on structures or buildings outside of the right-of-way rather than placing new poles in the right-of-way.

(N) For public safety and welfare reasons, the City will not allow the placement of small wireless facilities on electric transmission poles. However, small wireless facilities may be placed on distribution poles subject to the other requirements of this Article.

**§34-78. Access to Right-of-Way**

(A) General Terms:

(1) The term of an Agreement shall be for up to ten (10) years unless extended by mutual written agreement of the parties.

(2) The Agreement authorizes the provider's non-exclusive use of the right-of-way for the sole purpose of installing, maintaining and operating wireless communication facilities, including any pole built for the sole or primary purpose of supporting the wireless communication facilities to provide the services expressly authorized in the Agreement, subject to applicable laws, this Article and the terms and conditions of the Agreement. The Agreement authorizes use only of the right-of-way in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way, and it does not confer on the provider any interest in any particular location or to a superior or preferred location within the right-of-way. All use of City poles or other structures in the right-of-way shall require payment of fees for such use.

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(3) The provider shall, at its sole cost and expense, keep and maintain its wireless communication facilities and poles in the right-of-way in a safe condition, and in good order and repair.

(4) In the event of an emergency regarding the provider's small wireless facilities, or related poles, the provider shall immediately notify the City of the nature of the emergency and planned response to the emergency.

(B) Permit Required: No person may construct, install or maintain in the right-of-way any wireless communication facilities or pole without first receiving a permit from the Public Works Department.

(C) Application Requirements: The application shall be submitted by the provider or its duly authorized representative to the City Engineer. Applications shall contain the following:

(1) The applicant's name, address, telephone number, and email address, including emergency contact information for the applicant.

(2) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant or provider with respect to the filing of the application.

(3) A description of the proposed work and wireless communication facility sufficient to demonstrate compliance with the provisions of this Article.

(4) If applicable, a copy of the authorization from the owner of the pole, tower or support structure on or in which the wireless communication facility will be placed or attached.

(5) Detailed construction drawings and photo simulations regarding the proposed wireless communication facility.

(6) To the extent the proposed wireless communication facility involves collocation on a pole, tower or support structure, a structural report prepared by a Nebraska licensed professional engineer evidencing that the pole, tower or support structure will support the collocation (or that the pole, tower or support structure will be modified to meet structural requirements) in accordance with applicable codes.

(7) For any new above-ground wireless communication facilities, accurate visual depictions or representations, if not included in the construction drawings or photo simulations.

(8) Any other submission requirements per published City policies or regulations.

(D) Pole Attachment or Other Agreement: Prior to installing in the right-of-way any wireless communication facility, or any pole built for the sole or primary purpose of supporting a wireless communication facility, a person shall enter into a Pole Attachment or other agreement ("Agreement") with the City expressly authorizing use of the right-of-way for the wireless communication facility or pole proposed to be installed. The Agreement shall provide for the attachment to City-owned poles or structures

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in the right-of-way in addition to poles or structures owned by unrelated third parties, provided that the applicant secures the written consent of the third party for such attachment.

**§34-79. Preferred Pole Locations**

(A) All poles for supporting small wireless facilities in the right-of-way are permitted only after applying the following siting priorities, ordered from most-preferred (1) to least-preferred (6):

- (1) existing street lights;
- (2) relocated street lights;
- (3) replacement of street lights (with a pole of dual functionality) at the same location that can structurally support the Small Wireless Facilities;
- (4) new poles in the right-of-way specifically for Small Wireless Facilities;
- (5) electric distribution poles if they can meet the pole attachment agreement requirements;
- (6) traffic control signals but they must show why none of the other choices will work and ensure that the provider's equipment will not interfere with the functionality of the traffic signals.

(B) The applicant for a pole shall address preferences 4-6 in an alternative sites analysis prepared pursuant to §34-80 below.

**§34-80. Alternative Sites Analysis**

(A) For a pole other than 1-3 in §34-79, the applicant must address the City's preferred locations with a detailed explanation justifying why a site of higher priority was not selected. The City's location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage or capacity objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.

(B) A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.

(C) For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage or capacity objectives the applicant will provide (a) a description of its objective, whether it be to address a deficiency in coverage or capacity; (b) detailed maps or other exhibits with clear and concise Radio Frequency ("RF") data to illustrate that the objective is not met using the alternative (whether it be collocation or a

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more preferred location); and (c) a description of why the alternative (collocation or a more preferred location) does not meet the objective.

**§34-81. Antenna Arrays**

Antenna arrays are permitted in any zoning district as long as they are located upon an existing structure, excluding single family and duplex properties, that provides sufficient elevation for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than ten feet (10') above the structure. Installation on City property requires the execution of necessary agreements.

**§34-82. Accessory Uses, Equipment, Design, and Standards**

(A) Accessory Uses.

(1) Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception functions, and shall not include broadcast studios, offices, vehicles or equipment storage, or other uses not essential to the transmission or reception functions.

(2) All accessory buildings shall be constructed of building materials equal to or better than those of the primary building on the site and shall be subject to applicable permits.

(B) Accessory Equipment. All accessory equipment located at the base of a WCF shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter or cabinet that is (1) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (2) be located so as to be unobtrusive as possible consistent with the proper functioning of the WCF.

(C) Site Design Flexibility. Individual WCF sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the WCF and supporting equipment may be installed so as to best camouflage, disguise them, or conceal them, to make the WCF more closely compatible with and blend into the setting or host structure, upon approval by the City.

(D) General Standards

(1) Landscaping and Screening: Equipment shelters and cabinets and other on the ground ancillary equipment shall be screened with landscaping (except for those in the right-of-way) as required for the district in which they are located or with another design acceptable to the City. Alternatively, where technically feasible, the applicant shall incorporate the cabinet and other equipment into the base of a new pole (for example, for a small wireless facility) provided there is adequate space in the right-of-way and that ADA sidewalk accessibility requirements can be met. All provisions of

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the ADA (including, but not limited to, clear space requirements) shall be met by the applicant.

(2) New Poles: To the extent technically feasible, new poles must be designed to match the existing light fixtures and other poles, and they shall serve a dual purpose (for example, a new light fixture, flag pole or banner clips).

(E) Radio Frequency (RF) Emissions Compliance Report. A written report will be prepared, signed and sealed by a Nebraska-licensed professional engineer which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. In no event shall any small wireless facilities, either individually or collectively with those of others, exceed the maximum permissible RF emission standards of the FCC. In the event the FCC's maximum permissible RF standards are exceeded, the wireless provider shall immediately cease and desist the use of its equipment and facilities.

**§34-83. Independent Technical and Legal Review**

Although the City intends for City staff to review applications to the extent feasible, the City may retain the services of an independent technical expert and attorney of its choice to provide evaluations of permit applications for WCFs. The consultant shall have verifiable experience in the field of wireless communication facilities. The consultant's review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed WCF complies with the applicable approval criteria set forth in this Article. The applicant shall pay the reasonable cost for any independent consultant fees through a deposit, estimated by the City, within ten (10) days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued. The consultant shall provide an itemized description of the services and related fees and charges.

**§34-84. Indemnification**

Each permit issued for a WCF located on City property shall be deemed to have as a condition of the permit a requirement that the applicant, registrant and wireless provider defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, actions or causes of action as a result of the

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permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF.

**§34-85. FCC Shot Clock Requirements**

(A) Eligible Facilities Request. This Section implements Section 6409(a) of the Spectrum Act, 47 U.S.C. Section 1455(a), as interpreted by the FCC in its Report and Order No. 14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018 which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible Facilities Requests shall be governed by the provisions of Federal law including, but not limited to, application review, the sixty (60) day shot clock, tolling and deemed granted remedy.

(B) Collocation for other than Small Wireless Facilities. This Section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018 regarding collocation applications for other than small wireless facilities including, but not limited to, application review, the ninety (90) day shot clock and tolling.

(C) New Macro Cell Tower. This Section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018 regarding new macro cell tower applications including, but not limited to, application review, the one hundred fifty (150) day shot clock and tolling.

(D) Small Wireless Facilities - Collocation on Existing Structures. This Section implements the shot clock procedures that are contained in the Declaratory Ruling and Third Report and Order released September 27, 2018, regarding the collocation of small wireless facilities on existing structures, including but not limited to application review, the sixty (60) day shot clock, resetting the sixty (60) day shot clock once the City timely sends a notice of an incomplete application and tolling.

(E) Small Wireless Facilities - New Structure. This Section implements the shot clock procedures that are contained in the Declaratory Ruling and Third Report and Order released September 27, 2018, regarding the construction of small wireless facilities on a new structure, including but not limited to application review, the ninety (90) day shot clock, resetting the ninety (90) day shot clock once the City timely sends a notice of an incomplete application and tolling.



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**§34-86. Multiple Sites in One Application**

An applicant may propose no more than ten (10) sites in a consolidated application. The denial of a site in a consolidated application shall not affect the approval of any remaining sites.

**§34-87. Severability and Conflicts**

(A) If any section, subsection, sentence, clause, phrase or other portion of this Article, or its application to any person is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

(B) These Wireless Communication Facilities regulations are in addition to other regulations in the City Code. In case of a conflict between regulations, the more restrictive shall control.

SECTION 2. Any ordinance or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 3. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the *Grand Island Independent* as provided by law.

Enacted: January 28, 2020

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Roger G. Steele, Mayor

Attest:

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RaNae Edwards, City Clerk