



# **City of Grand Island**

**Tuesday, June 08, 2010**

**Council Session**

## **Item E8**

**Public Hearing on Changes to Chapter 36 of the Grand Island City  
Code Relative to Wireless Communications Tower Regulations**

**Staff Contact: Chad Nabity**

# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** June 8, 2010

**Subject:** Concerning Amendments to the Zoning Ordinance for the City of Grand Island and its 2 Mile Extra-Territorial Jurisdiction (C-14-2010All)

**Item #'s:** E-8, F-1, G-9, I-5

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

## **Background**

The proposed regulations would amend the Wireless Tower Regulations for the City of Grand Island (36-168). The complete background and discussion of these regulation changes is attached in the Planning Directors Report to the Planning Commission. Actions taken at this meeting relative to these changes should include:

### **Approval or Denial of the proposed regulations changes.**

If the changes are approved Council has before it a contract with the Center for Municipal Solutions and resolution to approve the contract and authorize the Mayor to sign the contract. Council also has a resolution to amend the schedule of fees to add specific fees for Wireless Communication Towers.

If the changes are not approved at this meeting or denied Council should defer action on the contract with the Center for Municipal Solutions and the changes to the fees until final action is taken.

The ordinance proposed for approval does not include preferential treatment for city owned properties relative to siting as suggest in the model ordinance. The Planning Commission voted to remove that from the siting preference criteria. The original siting preference criteria are shown below and if Council chooses to adopt the ordinance they could amend the ordinance to read as follows:

### **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 eight (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

### **Discussion**

Nabity stated these new regulations if adopted would establish a consistent framework for approving wireless communications facilities across the County. The main advantage to contracting with the Center for Municipal Solutions (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.

The new regulations for Grand Island, Hall County, Alda, Doniphan, Wood River and Cairo suggest an existing tower or structure on government property to be the first site for a new cell phone location. That was followed by an existing tower or structure on private property. If an existing tower or structure couldn't be found, the new regulations favor industrially zoned land, then manufacturing property, then commercial property, then agricultural property and as a final resort residential property.

Nabity said by removing the priority for government property, it doesn't exclude government property from being used. It just doesn't give it a preference.

"Giving priority to government over its taxpayers?" Planning Commission Chairman Pat O'Neill asked. "I have a problem with that."

Nabity did receive an electronic communication from PCIA, the wireless communication industry association expressing concerns about the proposed regulations. That

communication was entered into the record and will be forwarded with this recommendation. The PCIA also submitted a copy of their preferred model ordinance for review by the Planning Commission.

Only one telecommunications company came to speak on the regulations. Viaero site acquisition specialist Eugene Carroll of Lincoln objected to the new rule that a third-party review must be done for any tower request. He specifically objected to the third-party reviewer being the Center for Municipal Solutions (CMS), which was the only respondent to a Request for Proposals issued by the Planning Commission. The Planning Commission is recommending approval of the contract with CMS.

Carroll said CMS is against new telecommunications towers.

"Their motto is -- towers will go in as a last resort," he said. "That is not really an independent report." Carroll said the fees required under the new rules are also "not fair and reasonable" as required under Nebraska law. Application for a new telecommunications tower would cost \$3,000. A new configuration on an existing tower would cost \$1,500.

Along with that, the telecommunications company would have to place \$8,500 into an escrow account to pay for the cost of the third-party review. Carroll said there's no basis for the \$8,500. It's unknown how much the third-party company will spend and charge out.

Bob Naumann of CMS said more than 700 communities nationwide have hired CMS to provide tower expertise to cities and counties. CMS does not work for any telecommunication companies it is independent of the telecommunication industry, but has all the same engineering, site and analysis experts. The goal is to not have more towers than necessary while protecting communities from unnecessary lawsuits related to telecommunication towers.

The \$8,500 escrow account is common and has never been used in total. Any funds left over are refunded to the telecommunication company, per their request, Nabity said.

Naumann said the fees paid out from the escrow account are determined greatly by how cooperative and forthcoming with information the telecommunication company is that is applying for the tower. "The cost is as much in their control as anybody's," Naumann said.

Regarding the \$3,000 application fee, Nabity urged the commission to remember that fee covers the expenses of the tower over the life of the tower, which is about 20 years.

Considering that the current Hall County fee for a five-year conditional use permit is \$500 and that Hall County only issues permits for a 5 year period, that permit would cost \$2,000 over 20 years. Add in periodic staff time for reviews and updates over that time and the \$3,000 is not unreasonable, Nabity said.

A motion to amend the proposed regulations was made by Reynolds and seconded by Ruge, to eliminate items 1 and 3 of Section 36-168.09, relative to preferential treatment of properties owned by the governing body. A roll call vote was taken and the motion passed with 9 members present and 6 voting in favor (O'Neill, Ruge, Reynolds, Bredthauer, Connelly, Snodgrass) and 3 members abstaining (Aguilar, Amick, Hayes).

A motion was made by Amick and seconded by Hayes to approve the wireless communication tower Ordinance. A roll call vote was taken and the motion passed with 9 members present (Aguilar, Amick, O'Neill, Ruge, Hayes, Reynolds, Bredthauer, Connelly, Snodgrass) voting in favor and no members present abstaining.

## **Alternatives**

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

1. Move to approve

These regulations would go into effect 15 days from the adoption of the ordinance. The contract with CMS should be approved and the fee schedule should be changed.

2. Refer the issue to a Committee/Study Session

Council could refer the proposed changes back to the planning commission or to a study session of the council. If this is done no action should be taken on the contract or fees. Council could direct the planning department to look at the regulations suggested by PCIA. This action would likely increase the number of tower applications in the short term as companies are likely to want to get application approved under the existing regulations and existing fee structure.

3. Postpone the issue to future date

Council could postpone a decision on this issue or pass the ordinance to amend the regulations with multiple readings at successive meetings. This would provide time for additional input but again would likely increase the number of tower applications in the short term as companies are likely to want to get application approved under the existing regulations and existing fee structure.

4. Take no action on the issue

This would result in no changes to the current regulations or fee structure. City staff would continue to process applications as they come in using the same procedures that we have used previously.

### **Recommendation**

City Administration recommends that the Council approve the amended regulations as presented.

### **Sample Motion**

Move to approve as recommended or as amended by Council.

## **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 to 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](http://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.



**Via Electronic Mail**

June 2, 2010

Mr. Chad Nabity  
Director  
Regional Planning Department  
P.O. box 1968  
100 E 1st Street  
Grand Island, NE 68801

RE: **Consideration of Third-Party Consultant and Template Ordinance**

Dear Mr. Nabity,

We are writing to comment on the services of municipal consultants that review wireless facilities applications, as well as the provisions of template ordinances such consultants promote. As we just learned today that the Regional Planning Commission would be considering adopting a wireless ordinance and consultant tonight, we unfortunately have not had the opportunity to review the exact draft ordinance under consideration. However, because the consultant under consideration utilizes a substantially similar ordinance that is not uniquely tailored to individual jurisdictions, we are confident that the issues we raise are relevant. We urge the County to avoid the use of this consultant and the consultant's template ordinance.

PCIA—The Wireless Infrastructure Association ("PCIA") is the national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, telecommunications, and broadcasting services. PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of each community.

The citizens and businesses of Hall County—and the United States—increasingly rely on wireless services and devices. As of mid-2009, there were approximately 276 million wireless subscribers in the United States. Wireless users rely on wireless services in every facet of their lives and businesses. Wireless services play an essential role in ensuring and maintaining public safety; over 290,000 E911 calls are placed using wireless devices each day. The continued deployment of wireless infrastructure is essential to enable the wireless services on which first responders, businesses, and citizens rely.

Regarding consultants specifically, we respectfully submit that many policies proposed by the Center for Municipal Solutions ("CMS" or "Consultant") will limit the development of the wireless infrastructure that provides key services to the citizens of Hall County. Further, certain sections of the Consultant's template ordinance violate the Telecommunications Act of 1996 (the "Telecommunications Act"). Finally, we submit that the County should consider instead the

PCIA Model Zoning Ordinance (a copy of which is attached hereto), which balances local review of wireless facilities applications with citizens' need for improvements in wireless coverage. We urge you to consider our concerns, review our Model Zoning Ordinance, and allow for meaningful input and dialogue involving the wireless industry regarding this important issue.

## **Issues to Consider**

---

As wireless users in Hall County and nationwide grow increasingly dependent on wireless devices for voice, data and wireless broadband service, robust wireless infrastructure is necessary for the public safety and economic benefits that wireless services bring. Certain provisions of some communities' ordinances may limit the ability of citizens to access the full complement of wireless services they need and want. The Consultant's template ordinance used in other communities includes many problematic provisions. Provisions of concern include the following:

- Allowing a consultant to determine “**commercial impracticability**” allows an outside party without access to network design data to judge the validity of business decisions made by FCC-licensed carriers and their wireless infrastructure providers (like tower companies). Applications for telecommunications facilities should be judged by their compliance with appropriate land use regulations. The County's review of these facilities should not include what acts are “reasonable in commerce” for carriers and their infrastructure providers. Recently, two state legislatures enacted prohibitions on review of business decisions in the context of the wireless facilities permitting process. Florida Chapter 2005-171 (enacted in 2005) provides that local review “shall only address land development or zoning issues,” and holds that local governments “may not require information on or evaluate a wireless provider's business decisions....” Similarly, North Carolina Senate Bill 831 (enacted in 2007) provides that a local government “may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site.” Such legislative actions arose in direct response to consultants, including CMS. These consultants required telecommunications companies to “conclusively prove”—typically to the consultant's satisfaction—the company's business decision to locate a facility at the chosen site. In Florida and North Carolina, the discretionary analysis of such private, proprietary business decisions was deemed beyond the scope of allowable land use factors for local governments to consider.
- We believe that a “**completed application**” is one that conforms to the enumerated submittal requirements established in the ordinance at issue. A definition that substitutes a standard of “all information...necessary to enable an informed decision...” is unreasonably vague. Unfortunately, some jurisdictions (and their consultants) use this vague standard to justify failures to act on applications, thereby violating the Telecommunications Act. A completed application should be defined with specific reference to the ordinance that establishes application requirements.
- In its template ordinances, the Consultant typically defines “**modification**” so as to subject even a simple antenna upgrade at an existing cell site to the requirement of obtaining a Special Use Permit. While this definition creates clear benefits to consultants in the form of review fees, this requirement provides no benefit for a local government that wants to take full and immediate advantage of breakthroughs in wireless technology. As wireless carriers improve service and add new applications to their technologies (e.g., mobile email and



video), like-kind antenna changes and other minor equipment upgrades are often necessary to make these advances possible. An extensive land use permit review process involving the payment of thousands of dollars of fees through continually supplemented escrow accounts, municipal consultant site visits, and submission of technical materials by a wireless carrier to private consultants merely to “justify” the modification is entirely unnecessary if the antenna is the same dimension as, or a substantially similar dimension to, the existing antenna. Similar requirements have resulted in needless litigation that drains the resources of all parties and prevents the public from taking advantage of new technological resources. The definition of “modification” is so vague and overbroad that virtually every equipment upgrade—even like-kind equipment exchanges within a locked equipment enclosure—would be unlawful unless the applicant paid exorbitant fees and underwent an extensive municipal consultant “review” and public hearing process to obtain a new Special Use Permit. This is analogous to requiring office building tenants to seek zoning approval for the number, quantity, and type of copier machines in use. The definition of “modification” also should be expanded so that antenna exchanges are not required to undergo a full Special Use Permit review process. Antenna exchanges expedite the network upgrades required to bring new services to the wireless-using public.

- A requirement that *all* telecommunications facilities (even collocations on existing structures) require a **Special Use Permit** is at cross-purposes with a policy of encouraging collocations, and is over-burdensome because the land use decision for the existing tower has already been made. Such a requirement does not offer sufficient regulatory incentive for a wireless provider to collocate its facilities on an existing structure. To provide proper incentive, an ordinance should provide that collocations are subject only to administrative (staff) approval, and do not require a public hearing or consultant review. PCIA’s Model Zoning Ordinance offers language implementing administrative approval of collocations, and is a helpful resource.
- A definition of “**need**” as one limited to a need for improved wireless service within County or City boundaries ignores the cross-jurisdictional nature of FCC licenses for wireless service, and the nature of wireless service itself (which is used across county, state and national borders). Indeed, wireless carriers obtain FCC licenses to provide services in multi-jurisdictional regions. Wireless users don’t only use their devices in Hall County; they expect those devices to work in Howard County, across the state, across the country, and around the globe.
- The **radio-frequency emissions data** required in the Consultant’s template ordinance provisions may violate pre-emption provisions of the Telecommunications Act of 1996, which provides for federal pre-emption of state and local regulation of radio-frequency emissions. While the County can require a certification of compliance with federal radio-frequency standards, it cannot regulate radio-frequency emissions standards.
- **Municipal siting preferences** have been successfully challenged in other jurisdictions. See, e.g., *Nextel v. Town of Edgewood, NM*, 479 F.Supp.2d 1219 (D.N.M. 2006). Creating a government-preference does not fit within the express purpose of land use planning.
- The requirement for an **escrow deposit** for possible use by municipal consultants is excessive and implicates the more general concern that municipal consultants may obstruct the development of robust wireless infrastructure in Hall County. Any such escrow account should be based on a written scope of work, consultant qualification statement and

reasonable hourly rates. In addition, application fees should be directly related to **reasonable review fees** (which consultants often far exceed).

- The amount of any required **removal bond** should be commensurate with the actual costs of removal.
- The standard for the time within which a facility can be considered “**abandoned**” should be at least 365 consecutive days. It is conceivable that a facility would be temporarily off-line for a period of months while larger network upgrades occur, and this standard should allow for flexibility in that regard.

### **Charting the Hall County’s Course with Municipal Consultants**

Based on prior experience with consultants nation-wide, PCIA suggests that Hall County ask any prospective consultant several questions which bear consideration under the circumstances. PCIA also recommends that the County fully consider utilizing an open and competitive bidding process for any consultant work it may seek so that it can fully examine and compare the relative qualifications of each consultant.

*Are you exclusively dedicated to serving local governments?*

Many consultants also represent citizen opposition groups. Such representation raises serious questions about the impartiality and objectiveness of the consultant.

*Do you believe a gap in wireless coverage can be determined based on a drive test using hand-held mobile phones, and if so, have you ever advocated the use of such a test?*

Many consultants advocate the use of hand-held drive tests using mobile devices, even though federal courts have determined that such tests are not reliable.

*Do you believe that municipalities can regulate interference with other communications and electronic devices?*

While interference is rarely, if ever, a problem for wireless carriers (who are licensed to operate within a specific band of radio-frequency spectrum), some consultants use what can only be deemed scare tactics to assert that such interference is widespread. The FCC clearly provides that state and local governments are pre-empted by federal law from regulating radio-frequency interference, yet some consultants attempt to regulate this issue in violation of federal law.

*Have your or your firm’s services ever been terminated? If so, under what circumstances?*

There are instances where municipalities have terminated consultants, and this may be an issue for consideration. In 2004, the Town of Dryden, NY terminated the services of the consultant under consideration by the Commission (again, doing business in New York as the “Center for Municipal Solutions”). Town Board minutes indicated doubt about the reasonableness of consultant fees, and that the Board took issue with the consultant’s refusal “to supply information”

regarding the itemization of its fees upon request. More recently, Aiken County, SC effectively wrote this same consultant out of its revised ordinance because of excessive delays in reviewing applications.

These questions will elicit an open discussion about the services any consultant purports to provide. Furthermore, wireless industry stakeholders should also be afforded an opportunity to explain their site development methods, and their experiences with consultants, so the County has a full understanding of the regulatory environment, as well as the consultant's impact.

PCIA's Model Zoning Ordinance provides a balanced approach to wireless siting that allows for local government oversight of wireless facilities while still ensuring that jurisdictions benefit from the development and maintenance of robust wireless infrastructure for their community. Unlike the Consultant's template ordinance, use of PCIA's Model Zoning Ordinance does not require the County to commit itself to the engagement of any service contract. We welcome the opportunity to discuss our Model Zoning Ordinance with you further, and tailor it to the unique concerns of the Hall County and its citizens.

We urge you to allow for additional community and industry input on this important issue before retaining the services of any consultant or voting on any proposed ordinance. We appreciate the opportunity to provide comment in this discussion and are extremely interested in participating in future opportunities to engage in this important process.

Thank you for your time and consideration.

Best Regards,

                    /s/                      
Brian Regan  
Government Affairs Counsel  
PCIA—The Wireless Infrastructure Association  
901 N. Washington St., Suite 600  
Alexandria, VA 22314  
(703) 535-7407  
[reganb@pcia.com](mailto:reganb@pcia.com)

CC: John Amick  
Mark Haskins  
Deb Reynolds  
Pat O'Neill  
Karen Bredthauer  
Julie Connelly  
Ray Aguilar  
Scott Eriksen  
Leslie Ruge

Jaye Monter  
Bill Hayes  
Don Snodgrass

# 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, lightening 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.

### **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.

### **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.

**Comment [C1]:** 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

- C) Any Repair and Maintenance of a Wireless Facility does not require an Application for a Conditional Use Permit.

### **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. 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 (NIEER). 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 six (6) being the lowest priority.
  - 1) On existing Towers or other structures on other property in the city
  - 2) A new Tower on properties in areas zoned for Heavy Manufacturing use
  - 3) A new Tower on properties in areas zoned for Manufacturing uses other than Heavy Manufacturing
  - 4) A new Tower on properties in areas zoned for Commercial use
  - 5) A new Tower on properties in areas zoned for Agricultural use not planned for residential use in Comprehensive Plan
  - 6) 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.

**Comment [C2]:** 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.

- 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.

### **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.**

**Comment [C3]:** 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.



- 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.

### **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 [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.

### **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.