

## **ARTICLE XXXVIII. Wireless Telecommunications Facilities**

### **§ 205-269. Purpose.**

Article XXXVIII shall be known as the "Wireless Telecommunications Facilities Regulations." The Telecommunications Act of 1996 affirmed the City's authority concerning the placement, construction, and modification of Wireless Telecommunications Facilities. The City finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character, and environment of the City, its zoning jurisdiction, 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, its zoning jurisdiction, and its residents. The purposes of these regulations are to:

- A. Create streamlined, comprehensive wireless telecommunications facilities application and permit processes to insure that the placement, construction, or modification of wireless telecommunications facilities is consistent with the City's land use policies.
- B. Establish a fair and efficient process for review and approval of applications.
- C. Assure an integrated, comprehensive review of environmental impacts of such facilities.
- D. Protect the health, safety, and welfare of the City's zoning jurisdiction.

### **§ 205-270. Definitions.**

For the purposes of this Article, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. The purpose of these provisions is to promote consistency and precision in the interpretation of this Article. The meanings and construction of words as set forth shall apply throughout this Article, unless where modified in a specific section or where the context of such words or phrases clearly indicates a different meaning or construction.

**APPLICANT** -- Any wireless service provider submitting an application for either a special use permit or an for wireless telecommunications facilities.

**APPLICATION** -- All necessary and appropriate documentation that an applicant submits in order to receive zoning approval for a particular wireless telecommunications facility. For eligible facilities, this shall mean a building permit application. For all other facilities, this shall mean a special use permit application.

**ANTENNA** -- A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

**BASE STATION** -- A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined within this section or any equipment associated with a tower. Base Station includes, without limitation:

- A. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- B. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (DAS) and small cell networks).
- C. Any structure other than a tower that, at the time the relevant application is filed with City pursuant to this Article, supports or houses equipment described in subsections A and B of this definition that has been reviewed and approved in accordance with this Article, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with City under this Article, does not support or house equipment described in subsections A – C of this definition.

**COLLOCATION OR SHARED USE** -- 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 a previously existing tower will be considered a collocation as long as the new tower is no taller than the old tower and the old tower is removed within the time frame established in the special use permit for the tower replacement and removal.

**COMMERCIAL IMPRACTICABILITY OR COMMERCIALY IMPRACTICABLE** -- 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”.

**COMPLETE APPLICATION OR COMPLETED APPLICATION** -- An application that contains all information and data necessary to enable an informed decision to be made with respect to an application.

**DISTRIBUTED ANTENNA SYSTEM (DAS)** -- A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure, and generally serves multiple carriers. For the purposes of this Article, a distributed antenna system is considered a small wireless facility.

**ELIGIBLE FACILITIES REQUEST** -- Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving:

- A. Collocation of new wireless telecommunications facilities transmission equipment including a new carrier;
- B. Removal of wireless telecommunications facilities transmission equipment; or

C. Replacement of wireless telecommunications facilities transmission equipment.

For the purposes of determining whether a modification qualifies as an eligible facilities request, substantial change shall mean a modification that meets the following criteria:

- A. For towers outside the public rights-of-way, any increase in the height of a tower by more than 10% or by the height of one additional antenna array with separation from the nearest antenna not to exceed 20 feet, whichever is greater;
- B. For towers in public rights-of-ways and all base stations, any increase in the height of the tower or base station by more than 10% or more than 10 feet, whichever is greater;
- C. For towers outside the public rights-of-ways, the addition of an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater;
- D. For towers in public rights-of-ways and all base stations, the addition of an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- E. Installation of more than the standard number of new equipment cabinets for the technology involved, which shall not exceed four cabinets;
- F. Installation of more than one equipment shelter;
- G. Any excavation or deployment outside the current site;
- H. Any change that would defeat the concealment elements of the eligible support structure; or
- I. Any failure to comply with conditions associated with the original siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this subsection shall not apply to any modification that is non-compliant only in a manner that would not exceed the foregoing thresholds identified in subsections A – F of the definition of substantial change.

FAA -- The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC -- The Federal Communications Commission, or its duly designated and authorized successor agency.

HEIGHT -- When referring to a tower or structure, the distance measured from the pre-existing grade level at the time of application to the highest point on the tower or structure, even if said highest point is an antenna or a lightning protection device.

MODIFICATION OR MODIFY -- The addition, removal, or change of any of the physical and visually discernable components or aspects of a wireless telecommunications 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 change out 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 collocation is a modification. A modification shall not include the replacement of any components of a wireless telecommunications 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 telecommunications facility without adding, removing, or changing anything.

NIER -- Non-Ionizing Electromagnetic Radiation.

PERSON -- Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS SERVICES (PWS) OR PERSONAL TELECOMMUNICATIONS SERVICE (PTS) OR PERSONAL COMMUNICATIONS SERVICE (PCS) -- Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. For the purposes of this definition, unlicensed wireless service means the offering of telecommunication services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.

POLE – A service pole, municipally-owned utility pole, small wireless facility support pole, or other utility pole.

REPAIR AND MAINTENANCE -- The replacement of any components of a wireless telecommunications 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 telecommunications facility without the addition, removal, or change of any of the physical or visually discernable components or aspects of a wireless telecommunications facility that will add to the visible appearance of the facility as originally permitted.

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

Small wireless facility(s) are governed under Chapter 207 – Telecommunications of the Papillion Municipal Code.

SPECIAL USE PERMIT -- The official resolution approved by City Council which authorizes an applicant to apply for a valid building permit to construct and use wireless telecommunications facilities at a particular site.

**STEALTH OR STEALTH TECHNOLOGY** -- Using the least visually and physically intrusive wireless telecommunications facility that is not technologically or commercially impracticable under the facts and circumstances 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 facility.

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

**TECHNOLOGICAL IMPRACTICABILITY OR TECHNOLOGICALLY IMPRACTICABLE** -- The inability to comply with one or more of the applicable regulation(s) of this Article because such compliance is not feasible due to limitations in the technologies available at the time of application submission.

**TELECOMMUNICATIONS** -- The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems

**TELECOMMUNICATIONS STRUCTURE** -- A structure used in the provision of services described in the definition of wireless telecommunications facilities.

**TEMPORARY** -- Something, in relation to all aspects and components of this Article, that is not intended or that does not exist for more than ninety (90) days.

**TOWER** -- Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopoles, and that is not a utility pole, an alternative antenna telecommunications structure, or a City-owned infrastructure **UTILITY POLE** – An upright pole designed and used to support electric cables, telephone cables, telecommunication cables or cable service cables, which are used to provide lighting, traffic control, signage, or a similar function.

**WIRELESS TELECOMMUNICATIONS ACCESSORY FACILITY OR WIRELESS TELECOMMUNICATIONS ACCESSORY STRUCTURE** -- An accessory facility or structure serving or being used in conjunction with a wireless telecommunications facility, and located on the same property or lot as the wireless telecommunications facility, including, but not limited to, utility or transmission equipment storage sheds or cabinets.

**WIRELESS TELECOMMUNICATIONS FACILITY OR TELECOMMUNICATIONS SITE OR PERSONAL WIRELESS TELECOMMUNICATIONS FACILITY** -- A structure, facility, or location designed, intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes, but is not limited to, towers of all types and kinds and structures, including, but not limited to, buildings, spires, belfries, silos, water towers, signs, or other structures that can be used as a support structure for antennas or the functional equivalent of such. This definition further includes all related facilities, structures, and equipment such as cabling, equipment shelters, and other structures associated with the site which are intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services, and any commercial wireless telecommunication service not licensed by the FCC.

**§ 205-271. Overall policy and desired goals for permitting wireless telecommunications facilities.**

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the health, safety, public welfare, environmental features, nature and character of the community and neighborhoods within the City's zoning jurisdiction, and other aspects of the quality of life specifically listed elsewhere in this Article, the City hereby adopts an overall policy with respect to the permitting of wireless telecommunications facilities for the express purpose of achieving the following goals:

- A. Requiring a special use permit for any new, collocation, or modification of a wireless telecommunications facility that does not meet the criteria for an eligible facilities request.
- B. Implementing an application process for person(s) seeking approval for wireless telecommunications facilities.
- C. Establishing a policy for examining applications and issuing approvals for wireless telecommunications facilities that is both fair and consistent.
- D. Promoting and encouraging, wherever possible, the sharing and or collocation 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 impracticable or commercially impracticable under the facts and circumstances.

**§ 205-272. Exceptions from application requirements for wireless telecommunications facilities.**

- A. Exceptions from special use permit requirement. No person shall be permitted to site, place, build, construct, modify, or prepare any site for the placement or use of wireless telecommunications facilities without having first obtained a special use permit for wireless telecommunications facilities unless such corresponding wireless telecommunications facility is classified by the Planning Director, or his or her designee, as:
  - (1) An eligible facilities request, which is subject to the permitting requirements of § 205-275;  
or
  - (2) A request for the installation of new or collocations of small wireless facility(s) located in the public right-of-way as defined in § 205-270; or
  - (3) One of the non-commercial exclusions delineated in § 205-273; or
  - (4) Repair and maintenance as defined in § 205-270.

- B. Existing wireless telecommunications facilities. All legally permitted wireless telecommunications facilities, constructed as permitted and existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided, however, that any modification of an existing wireless telecommunications facility that is visible or impacts public health, safety and welfare shall require the entire facility and any new installation to comply with this Article.
- C. Repair and maintenance of a wireless telecommunications facility. Any repair and maintenance of a wireless telecommunications facility.

**§ 205-273. Non-Commercial exclusions.**

The following non-commercial exclusions shall be exempt from regulation under this Article:

- A. Any fire, police, department of transportation, or other public service facilities owned by, operated by, or operated in partnership with the City, Sarpy County, or a state or federal authority.
- B. 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.
- C. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio equipment, and other similar non-commercial Telecommunications.
- D. Facilities used exclusively for providing unlicensed spread spectrum technology (i.e. Bluetooth or a 'Hot Spot'), where the facility does not require a new tower, where the service is not to be used for commercial purposes, where there is no fee or charge for the use of the service, and where the service is intended to be useable for a distance of less than 200 feet.

**§ 205-274. Special use permit application and other requirements.**

- A. Compliance with application requirements. All applicants for a special use permit for wireless telecommunications facilities shall comply with the requirements set forth in § 205-302, and as otherwise required by state or federal law.
- B. Pre-Application meeting required. Prior to the submittal of an application, the applicant shall participate in a pre-application meeting with designated City personnel, including any consultant or expert contracted by City, as applicable. The purpose of the pre-application meeting shall be to address issues that will help to expedite the review and permitting process. A pre-application meeting may also include a site visit as determined by the Planning Director or his or her designee.
- C. Number of applications required. An applicant shall submit to the Planning Department the number of copies of the completed application determined to be needed.

- D. Special use permit required. No wireless telecommunications facility that requires a special use permit shall be installed, constructed, or modified until the corresponding special use permit has been approved by City Council, and all applicable building permits have been obtained in accordance with § 205-305.
- E. Representations by applicant. Any and all representations made by the applicant to the City or its contracted consultants or experts 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.
- F. Special use permit application requirements for wireless telecommunications facilities. The special use permit application shall meet the requirements of § 205-302C. Additionally, a special use permit application shall include the following supplemental information:
- (1) Documentation that verifies applicant has the right to proceed as proposed on the site. This shall include, but not be limited to, an executed copy of the lease with the corresponding landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
  - (2) A statement in writing from the applicant that the construction of the proposed wireless telecommunications facility shall be legally permissible upon the City's approval of the corresponding special use permit and upon the issuance of all applicable building permits to be obtained in accordance with § 205-305. Such statement shall include, but not limited to, confirmation of the fact that the applicant is authorized to do business in the State of Nebraska.
  - (3) A descriptive statement of the objective(s) for the new facility or modification, including documentation of the need for the facility or modification. Such statement of need may pertain to coverage or capacity demands.
  - (4) Documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service primarily and essentially within the City's zoning jurisdiction. 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. Additionally, if a capacity need is being asserted, the applicant shall include an analysis of current and projected usage. In the event that a new tower is proposed, the drive test data that supports the capacity need shall be provided.
  - (5) The name, address, and phone number of the person preparing the application.
  - (6) If the subject of the application is a tower and the tower owner is not the applicant, the applicant shall provide name and address of the tower owner.
  - (7) The zoning district or designation in which the property is situated.
  - (8) A site plan that complies with § 205-301 D(4), which also includes:
    - (a) The location, size, and height of all existing and proposed structures on the applicable site; and



- (b) The type, locations and dimensions of all proposed and existing landscaping, screening, and fencing; and
  - (c) The location of the nearest residential structure if any such structure is located within 300 feet.
- (9) A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances, and apparatus, including height above pre-existing grade, materials, color, and lighting. This shall include:
- (a) The azimuth, size, and center-line height location of all proposed and existing antennae on the supporting structure; and
  - (b) The number, type, and model of the antenna(s) and equipment proposed with a copy of the specification sheet; and
  - (c) The make, model, type, and manufacturer of the tower; and
  - (d) The frequency, modulation, and class of service of radio or other transmitting equipment; and
  - (e) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts.
- (10) A design plan confirming the tower's capacity to accommodate multiple users in compliance with § 205-278.
- (11) Signed documentation to verify that the wireless telecommunication facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER) such as a "Checklist to Determine Whether a Facility is Categorically Excluded". If not categorically excluded, the applicant shall submit a complete RF Emissions study.
- (12) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices.
- (13) A copy of the FCC license for the intended use of the wireless telecommunications facilities, if applicable.
- (14) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site, and if for an existing tower or water tank site, a copy of the installed foundation design.
- (15) A written report that demonstrates the applicant's review of the priority list established in § 205-277 for site selection for wireless telecommunications facilities. Such review shall be in order of priority and identify the technological reason for the site selection. If the applicant selects a site of lower priority, a detailed written explanation that justifies why sites of a higher priority were not selected shall be included in the report.

- (16) A structural analysis report that includes 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 City, State and Federal structural requirements for loads, including wind and ice loads. Such structural analysis shall bear the signature and seal of a registered professional licensed in the State.
- (17) For any new tower or any application that proposes to increase the height of a structure or building, 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 telecommunications facilities is in compliance with FAA Regulation Part 77 and if it requires lighting. If this analysis determines, that an FAA determination is required, then the applicant shall provide all filings with the FAA, all responses from the FAA, and any related correspondence with the application. If lighting is required, applicant shall provide a plan for sufficient lighting that confirms that the lighting is as unobtrusive and inoffensive in effect as is permissible under State and Federal regulations.
- (18) For any new tower, the applicant shall:
- (a) Provide 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's zoning jurisdiction. Copies of written requests and responses for shared use shall be attached to the application along with any letters of rejection stating the reason for rejection.
  - (b) Structurally design any new tower to accommodate at least three additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. City Council may waive or reduce the accommodation of three additional antenna arrays as part of the special use permit, provided that the applicant, in writing as part of the application, demonstrates to the satisfaction of City Council that the provision of future shared usage of the tower is technologically impracticable, is commercially impracticable, or creates an unnecessary and unreasonable burden, based upon:
    - [1] The foreseeable number of FCC licenses available for the area;
    - [2] The kind of wireless telecommunications facilities site and structure proposed;
    - [3] The number of existing and potential licenses without wireless telecommunications facilities spaces or sites; or
    - [4] Available space on existing and approved towers.
  - (c) Provide a comprehensive report inventorying existing towers and other suitable structures within two miles of the location of any proposed new tower that demonstrates conclusively why an existing tower or other suitable structure cannot be used. Notwithstanding the foregoing, the Planning Director may establish an

alternate distance provided that the applicant demonstrates to the satisfaction of the Planning Director that some other distance is more reasonable.

- (d) Provide a statement that the tower owner will comply with the requirements for shared use of wireless telecommunications facilities and other structures as required by § 205-278.
  - (e) Submit documentation justifying the total height of any tower, facility or antenna requested and the basis therefore. Documentation in the form of propagation studies shall include all backup data used to perform at the requested height and at intervals 10 feet above, 10 feet below, and 20 feet below the requested height. Such documentation shall be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City's zoning jurisdiction, to the extent practicable, unless good cause is shown.
  - (f) Submit documentation justifying the setback of any tower requested and the basis therefore.
- (19) For any new tower or an increase in height of an existing structure that constitutes a substantial change, the applicant shall provide a visual impact assessment that demonstrates that the wireless telecommunications 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. The visual impact assessment, which shall include:
- (a) A computer generated "Zone of Visibility Map" for a new tower or any structure where an increase in height is proposed to illustrate locations from which the proposed installation may be seen. Such Zoning of Visibility Map shall be prepared at a minimum of one mile radius from said tower or structure and shall depict the area with and without foliage.
  - (b) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the City's zoning jurisdiction as may be appropriate, including but not limited to State highways and other major roads; State and local parks; public lands; Environmental Overlay Districts; Historic Overlay 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.
  - (c) A written description of the visual impact of the proposed facility including, and as applicable, the tower base, guy wires, fencing and wireless telecommunications accessory facilities or structures from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

- (d) Demonstration in writing or by drawing, identifying how the base and all related equipment and structures of the proposed wireless telecommunications facility shall be effectively screened from view.
  - (e) Demonstration by drawing that 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, including the utilization of stealth or concealment technology, as may be required by the City.
- B. Utility installation. 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 Code where appropriate.
- C. Requirements for access drives, turn-around spaces, and parking. At a wireless telecommunications facilities site, an access drive, 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. Access drive 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.
- D. Compliance with technical, safety, and safety-related codes. 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, 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 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 codes, the more stringent shall apply.
- E. Responsibility for permits and licenses. The holder of a special use permit granted under this Article 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.
- F. Notification of modification. The holder of a special use permit shall notify the Planning Department of any intended modification of a wireless telecommunication facility and shall apply to the Planning Department to modify, relocate or rebuild a wireless telecommunications facility.

**§ 205-275. (Reserved)**

**§ 205-276. Review and processing of special use permit applications.**

- A. Timely review. The City will undertake a review of any special use permit 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 needs, and the applicant's desire for a timely resolution.
- B. Review of applications. The Planning Director or his or her designee shall review any special use permit application for completeness within 30 days of receipt of the application or as required by FCC regulations.
- C. Invalid or incomplete applications. The Planning Director or his or her designee may reject any special use permit or eligible facilities permit application that does not meet the requirements stated within this Article or which are otherwise incomplete.
- D. Notification of incomplete application. The Planning Director or his or her designee shall notify an applicant if the special use permit application is deemed incomplete. Such notification shall be in writing and shall occur within 30 days of receipt of the application or as required by FCC regulations. For the first notification of an incomplete submittal, the letter shall delineate any missing or incorrect information and specify the code, provision, ordinance, application instruction or other publicly stated procedures that required such information to be submitted. For any subsequent notification of completeness, only written notification of an incomplete submittal is required.
- E. Supplemental information. The City, at any stage prior to issuing a special use permit, may require any supplemental information as it deems necessary to determine that the application complies with this Article.
- F. Review of a supplemental submittal. The Planning Director or his or her designee shall review any supplemental submittal to a special use permit application for completeness within 10 days of receipt of such submittal or as required by FCC regulations.
- G. Notification of incomplete supplemental submittal. In the event that an applicant submits supplemental documentation or information and such supplemental submittal is deemed to not provide the requested information or documentation, the Planning Director or his or her designee shall notify the applicant that the supplemental submittal is incomplete. Such notification shall be in writing and shall occur within 10 days of receipt of the supplemental submittal or as required by FCC regulations.
- H. Authorization for a special use permit. For any special use permit application, the approval process established in § 205-302D shall be utilized provided that only a complete application shall be eligible to be considered at Planning Commission or City Council.
- I. City Council authority. After the public hearing and after formally considering the special use permit application, the City Council may approve, approve with conditions, or deny a Special 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 special use permit shall always be upon the applicant.

- J. Denial of special use permit. If the City Council denies the special use permit application, then the Applicant shall be notified of such denial in writing within 10 days of the City Council's action.

**§ 205-277. Location of Wireless Telecommunications Facilities.**

- A. Priorities for wireless telecommunication facilities locations. Wireless telecommunications facilities shall be located, sited, and erected in accordance with the following priority list, one being the highest priority and seven being the lowest priority.

- (1) On existing towers or other structures on City or other publicly owned properties, including the right-of-way.
- (2) On existing towers or other structures on other property.
- (3) A new tower or other structures on City or other publicly owned properties, including the right-of-way.
- (4) A new tower or other structures on properties in areas zoned LI or GI.
- (5) A new tower or other structures on properties in areas zoned LC, CC, or GC.
- (6) A new tower or other structures on properties in areas zoned AG.
- (7) A new tower or other structures on properties in areas zoned RE, R-1, R-2, R-3, R-4, or MH.

- B. Use of priority list. An applicant for a special use permit shall utilize the priority list established in § 205-277A for site selection for wireless telecommunications facilities. If the proposed site is not proposed for the highest priority established in § 205-277A, then the special use permit applicant shall provide a detailed explanation with the application that identifies why a site of a higher priority was not selected. The special use permit applicant seeking waiver from the requirement to locate according to the highest priority must satisfactorily demonstrate to City Council 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. A special use permit applicant shall not by-pass sites of higher priority by stating the site proposed is the only site leased or selected.

- C. Collocation. A special use permit applicant for a new wireless telecommunications facility shall address collocation as an option. If such option is not proposed, the special use permit applicant shall provide a detailed explanation with the application that explains to the reasonable satisfaction of the City Council why collocation is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting collocation shall not be a valid basis for any claim of commercial impracticability or hardship.

- D. City Council authority to approve. Notwithstanding the above, the City Council may approve any site located within an area in the above list of priorities, provided that the City Council 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. City Council authority to deny. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City Council may deny a special use permit for any of the following reasons.
  - (1) The special use permit conflicts with safety and safety-related codes and requirements;
  - (2) The special use permit conflicts with the historic nature or character of a neighborhood or historical district;
  - (3) The use or construction of wireless telecommunications facilities is contrary to an already stated purpose of a specific zoning or land use designation;
  - (4) The placement and location of wireless telecommunications facilities 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; or
  - (5) The special use permit conflicts with the provisions of this Article, or applicable State or federal law.

**§ 205-278. Shared use of wireless telecommunications facilities and other structures.**

- A. Collocation and shared use encourage. The City encourages collocation on or shared use of existing Towers or others structures without increasing the height to the construction of a new Tower or increasing the height of an existing tower or structure.
- B. Negotiation for shared use required. The owner of tower, and his successors in interest, shall negotiate in good faith for the shared use of the tower by other wireless service providers, and shall:
  - (1) Respond within 60 days to a request for information from a potential shared-use applicant.
  - (2) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.
  - (3) 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.
- C. Technology for shared use. Shared use of wireless telecommunications facilities and other structures shall consist only of the minimum antenna array technologically required to provide

service primarily and essentially within the City's zoning jurisdiction, to the extent practicable, unless good cause is shown.

- D. Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.

**§ 205-279. Setbacks.**

Setbacks for towers, wireless telecommunications facility structures, and wireless telecommunications facilities accessory structures shall be established within the special use permit. The setback shall be analyzed and established in the context of the surrounding land uses, the proximity to surrounding structures and improvements, and the proximity to public right(s)-of-way. In the event that the wireless telecommunications facility site or the adjoining land is zoned Agricultural or undeveloped, the future land use designation and the anticipated growth within the immediate vicinity shall be considered in the analysis. City Council may condition approval of a special use permit on any safeguards as necessary to protect the public health, safety, and welfare as it relates to the establishment of setbacks.

**§ 205-280. Visibility of wireless telecommunications facilities.**

- A. Artificial lighting or marking. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B. Tower color. Towers shall be galvanized 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 Article.
- C. Condition of approval. City Council shall find as a condition of granting a special use permit that the wireless telecommunication facility is the most appropriate site insofar as being the least visually intrusive among those available in the City's zoning jurisdiction.

**§ 205-281. Security of wireless telecommunications facilities.**

- A. Prevention of unauthorized access. All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
  - (1) 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
  - (2) 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.

**§ 205-282. Signage for wireless telecommunications facilities.**

- A. RF warning or alert signage. Wireless telecommunications facilities shall contain radiofrequency (RF) warning or alert signage. Such RF warning or alert signs shall:



- (1) Meet the standards and format recommended and specified by the Institute for Electrical and Electronics Engineers (IEEE); and
  - (2) Be prominently displayed in areas that will be readily seen by those persons who may have access to an area where high RF fields are present.
- B. Notification signage. Wireless telecommunications facilities shall contain a sign that identifies the name(s) of the owner(s) and operator(s) of the antenna(s) and the equipment owner of the shelter or cabinet as well as emergency phone number(s). The sign shall be mounted on the equipment shelter or cabinet of the applicant and be visible from the access point of the site. On tower sites, an FCC registration sign, as applicable, shall also to be prominently displayed in areas that will be readily seen by those persons who may have access to the area.
- C. Lighting of signage. The signs shall not be lighted, unless applicable law, rule, or regulation requires lighting.
- D. No other signage permitted. No signage other than RF warning or alert signage and notification signage as defined in subsections A and B shall be permitted.

**§ 205-283. Inspection requirements after construction.**

- A. Documentation of tower condition required. Upon completing construction and before the City's issuance of the Certificate of Compliance, the applicant shall provide signed documentation of the tower condition pursuant to the requirements of ANSI/TIA/EIA-222 (adopted by reference in the building code), Annex for Tower Maintenance, Condition Assessment and Inspection Procedures, to the Planning Department to ensure that the tower was constructed as permitted.
- B. Inspection reports required. After issuance of the Certificate of Compliance, the tower owner shall inspect the tower and complete an inspection report pursuant to the requirements of ANSI/TIA/EIA-222 (adopted by reference in the building code), Annex for Tower Maintenance, Condition Assessment and Inspection Procedures, every three years for a guyed tower and every five years for monopoles and self-supporting towers to ensure appropriate maintenance of the tower. The tower owner shall provide a copy of the required inspection report to the Planning Department within 60 days of such inspection.
- C. Reservation of authority to inspect wireless telecommunications facilities. In order to verify that the special use permit and eligible facilities permit holders 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 Planning Director or his or her designee 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.

**§ 205-284. Retention of expert assistance and reimbursement by applicant.**

- A. Use of consultant or expert. The Planning Director or his or her designee may authorize the use of any consultant or expert necessary to assist the City in reviewing and evaluating any special use permit or eligible facilities application and any construction and modification authorized by such permit. Such review and evaluation may include site inspections.
- B. Escrow required. In the event that City refers any special use permit or eligible facilities permit application to a consultant or expert, such applicant shall deposit with the City escrow funds sufficient to reimburse the City for all costs of the City's consultant or expert in providing expert evaluation and consultation to any agency of the City in connection with the review of any application, including where applicable, any lease negotiation with the City, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial escrow deposit shall be in the amount specified in the Master Fee Schedule. The placement of the initial escrow deposit with the City shall occur prior to consultant or expert providing service to the City. If this escrow account has a balance less than the minimum balance specified in the Master Fee Schedule before the conclusion of the project, the applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance consistent with the amount specified in the Master Fee Schedule. 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 be promptly refunded to the applicant. The applicant may request copies of consultants' or experts' invoices, as applicable. If the applicant objects to any portion of those invoices, applicant may ask the City to audit those specific items for reasonableness, and may request relief therefrom if not deemed reasonable by the City. The foregoing shall not be construed to require the City to grant the requested relief.
- C. Fee cap. Notwithstanding the above, there shall be a fee cap as to the total consultant or expert fees to be charged to applicant in a case established in the Master Fee Schedule. The foregoing shall not prohibit the City from imposing additional reasonable and cost based fees for costs incurred should an applicant amend or change its application and the fee cap shall not apply as to any fees which the City determines to be attributable to the dilatory or otherwise bad faith actions of applicant in providing a complete application or in proceeding with a public hearing.

**§ 205-285. Performance guaranty.**

The applicant for each special use permit and the owner of record of any proposed wireless telecommunications facilities property site shall be required to execute and file with the City a bond, or other form of security, at its cost and expense, which is acceptable to the City as to the type of security and the form and manner of execution, in an amount as specified in the Master Fee Schedule. Such performance guaranty shall be sufficient to assure the faithful performance of the terms and conditions of this Article and the conditions of any special use permit issued pursuant to this Article. The full amount of the bond or security shall remain in full force and effect 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 special use permit or the applicable. Notwithstanding the foregoing, the Planning Director or his or her designee may waive the requirement for a performance guaranty provided that the applicant provides documentation that said applicant established a performance guaranty for the wireless telecommunication facilities

property site as part of a previous application process and that such performance guaranty remains in full force.

**§ 205-286. Liability Insurance.**

- A. A holder of a special 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 special use permit in amounts as set forth in the Master Fee Schedule.
- B. For a wireless telecommunications facility on City property, the commercial general liability insurance policy shall specifically include the City and its officers, elected and appointed officials, employees, and agents 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 Clerk with at least 30 days prior written notice in advance of the cancellation of the insurance.
- E. Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than 15 days after the granting of the special use permit, the holder of such permit shall deliver to the City Clerk a copy of each of the policies or certificates representing the insurance in the required amounts.
- F. Renewal or replacement policies or certificates shall be delivered to the City Clerk at least 15 days before the expiration of any such liability insurance policies.

**§ 205-287. Indemnification.**

- A. Any application for wireless telecommunication facilities that is proposed for City property, pursuant to this Article, 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, elected and appointed officials, employees, and agents 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 facilities, 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 officers, elected and appointed officials, employees, 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 special use permit for wireless telecommunications facilities.

**§ 205-288. Removal of wireless telecommunications facilities.**

- A. Removal required. 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) Permitted wireless telecommunications facilities shall be deemed abandoned if not used as wireless telecommunications facilities for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by a force majeure, in which case, repair or removal shall commence within 90 days;
  - (2) Permitted wireless telecommunications facilities fall into such a state of disrepair that the City determines that it creates a public 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 special use permit, or any other necessary authorization;
  - (4) The special use permit has been revoked by City Council as authorized by § 205-302G(2);  
or
  - (5) A presumed special use permit has become void as defined in § 205-302G(3).
- B. Notification of removal. If the Planning Director or his or her designee makes a determination that the removal of wireless telecommunications facilities is required as authorized in subsection (A) of this section, then the Planning Director or his or her designee shall notify the holders of any special use permit for wireless telecommunications facilities that said wireless telecommunications facilities are to be removed.
- C. Restoration of site. The holder of any special use permit, or their respective 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 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 City Council.
- D. Authorization to cause removal of wireless telecommunications facilities. If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the applicable special use permit holders have received notice, then the City may cause the removal of the wireless telecommunications facilities at the sole expense of the owner and the applicable special use permit holders using the performance guaranty(ies) required pursuant to § 205-285. In the event that the cost of the removal exceeds the performance guaranty(ies), the City shall invoice

the owner and the applicable special use and eligible facilities permit holders for the remaining balance.

- E. Abandoned wireless telecommunications facilities. If the City orders the removal of any wireless telecommunications facilities pursuant to § 205-288 and the owner of the wireless telecommunications facilities does not claim and remove such facilities from the site to a lawful location within 10 days of such order, then the City may take steps to declare the wireless telecommunications facilities abandoned, and to sell said abandoned wireless telecommunications facilities and their components.
- F. Temporary use permit permitted for sale of the wireless telecommunications facilities. The owner of the wireless telecommunications facilities or any special use permit holder impacted by the order to remove the wireless facilities may apply for a temporary use permit using the process established in § 205-210D to:
  - (1) Enable the sale of the wireless telecommunications facilities; or
  - (2) Develop a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities. Such plan shall be developed by the applicable permit holder or tower owner and shall be subject to the approval of the City. Such plan shall not be valid until an agreement authorizing such plan is executed by the applicable special use permit holder(s) and the City. If such agreement is not approved and executed by the parties within the 90 day time period of the temporary use permit, then the City may cause the removal of the applicable wireless telecommunications facilities in accordance with § 205-288D.

#### **§ 205-289. Waiver.**

An applicant may request a waiver of any requirement of this Article as part of the applicable special use permit application. The burden to prove the need for the requested waiver shall rest solely on the applicant. The applicant shall bear all costs of the City in considering the requested waiver. City Council shall be authorized to grant a waiver for special use permit applications for wireless telecommunications facilities. A waiver shall not be approved unless the applicant demonstrates by clear and convincing evidence to the satisfaction of the approving authority that the waiver will have no significant effect on the health, safety and welfare of the City, its residents, and other service providers. Any waiver that is granted may be designated as temporary or permanent, partial or complete.

#### **§ 205-290. Adherence to City, State and Federal rules and regulations.**

- A. To the extent that a special use permit holder for wireless telecommunications facilities has not received a waiver in accordance with § 205-289, or is otherwise exempt, from applicable State and Federal agency rules or regulations, then such permit holder shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of the City and 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 the City and 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 or are modified during the duration of a special use permit for wireless telecommunications facilities, then such permit holder shall conform the permitted wireless telecommunications facilities to the applicable changed or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

**§ 205-291. (Reserved)**

**§ 205-292. (Reserved)**