

ORDINANCE NUMBER 20-049

An ordinance to add Chapter 28 entitled "Telecommunications"; and to adopt Article I thereunder entitled "Small Wireless Facilities" to the Beatrice City Code regulating the City's processing of applications for the deployment of small wireless facilities by telecommunications companies within the City's rights-of-way; and to provide for publication in pamphlet form and for an effective date of this ordinance.

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

SECTION 1. That Chapter 28 be added to the Beatrice City Code as follows:

"Chapter 28 – TELECOMMUNICATIONS

Article I. Small Wireless Facilities

Sec. 28-1. - Findings and purpose.

- A. The City Council finds that it is necessary to achieve a balance between the telecommunications needs of the City's citizens, and the orderly, safe, and aesthetic deployment of small wireless facilities by telecommunications companies. The deployment of small wireless facilities is expected to enable the provision of improved and enhanced wireless services to citizens and visitors in the City. The Federal Communications Commission has encouraged and required the adoption of policies supporting the deployment of small wireless facilities, in its September 27, 2018 Declaratory Ruling and Third Report and Order, WT Docket Nos. 17-79 and 17-84. Also, Neb. Rev. Stat. 16-1201 et seq. imposed new limits on the local regulation of small wireless facilities. Those actions encourage the placement of such small wireless facilities in public rights of way.
- B. The City is responsible for the safe and aesthetic maintenance of its public rights of way, for the benefit of the public and for the protection of public health, safety, and welfare. Public rights of way are a finite resource, and are subject to demands from competing interests. It is necessary to govern their use in a fair, safe, and orderly manner. This includes the proposed use of public right of way for telecommunications purposes. The City is also responsible for the processing and review of proposed telecommunications uses for properties other than public rights of way, with the objective of protecting public health, safety, and welfare.

- C. It is therefore appropriate to adopt these rules and regulations for the processing and review of proposed small wireless facilities, both on public rights of way and on other properties.
- D. The purpose of this article is to adopt regulations governing the safe, responsible, and fair deployment of small wireless facilities on public rights of way and on other properties. It is the further purpose of this article to comply with or adopt provisions stated in the said September 27, 2018 FCC Order and Neb. Rev. Stat. 16-1201 et seq.

Sec. 28-2. 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.

ACTION or TO ACT – The City’s grant of an application or issuance of a written decision denying an application.

ANTENNA – Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

APPLICABLE CODES – Any uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with federal, state or local law and to the extent such codes have been adopted by the City and are generally applicable in the City.

APPLICANT – Any person who submits an application and is a wireless provider.

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

AUTHORIZATION – Any approval that the City must issue under this article and applicable codes prior to the deployment of a small wireless facility, along with any associated antenna equipment and support structure, including, but not limited to, zoning approval, building permit, and permit under this article.

CANTENNA – A cylindrical shaped antenna installed at the top of a pole.

COLLOCATE or COLLOCATION – To install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a support structure or utility pole. Collocate or collocation does not include the installation of a new utility pole or new support structure in the right-of-way.

COMMUNICATIONS FACILITY – Any set of equipment and network components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), a telecommunications carrier as defined in 47 U.S.C. 153(51), a provider of information service as defined in 47 U.S.C. 153(24), or a wireless services provider, to provide communications services, including cable service as defined in 47 U.S.C. 153(8), an information service as defined in 47 U.S.C. 153(24), wireless services, or other one-way or two-way communications service.

COMMUNICATIONS NETWORK – A network used to provide communications service.

COMMUNICATIONS SERVICE – A cable service as defined in 47 U.S.C. 522, an information service as defined in 47 U.S.C. 153, a telecommunications service as defined in 47 U.S.C. 153, or a wireless service.

COMMUNICATIONS SERVICE PROVIDER – A cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153. Communications service provider includes a wireless provider.

DECORATIVE POLE – A pole that is specially designed and placed for aesthetic purposes.

DEPLOYMENT – Placement, construction, or modification of a small wireless facility.

FCC – The Federal Communications Commission.

FEE – A one-time, nonrecurring charge, to be collected upon application.

GROUND MOUNTED EQUIPMENT – Equipment situated at or below grade level, such as at or near sidewalks, alleyways, driveways, drive aisles, or streets, and is distinct from equipment mounted on existing infrastructure, such as telephone poles or buildings.

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

LAW – Any federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

MAKE-READY WORK – All work, as reasonably determined by the City, required to accommodate a small wireless facility on a utility pole, and to comply with all the City's applicable codes. Such work includes, but is not limited to, modification or replacement of utility poles or lines, installation of guys and anchors, rearrangement of existing equipment, inspections, reasonable consultant fees or expenses, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), tree trimming (other than tree trimming performed for normal maintenance purposes), facility construction, or conduit system clearing, but does not include ordinary maintenance.

MICROWIRELESS FACILITY – Any small wireless facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and with any exterior antenna no longer than eleven (11) inches.

ORDINARY MAINTENANCE AND REPAIR – Inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a facility.

PANEL ANTENNA – A flat, rectangular shaped antenna installed on the side of a pole.

PERMIT – A written authorization, in electronic or hard copy format required by the City to perform an action, initiate, continue, or complete installation of a small wireless facility on an existing utility pole or an existing support structure, or to install, modify, or replace a utility pole to support installation of a small wireless facility.

PERMITTEE – An applicant that has received a permit under this article, and its successors and assignees.

PERSON – An individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization.

PUBLIC POWER SUPPLIER – A public power district or any other governmental entity providing electric service. Public power supplier includes a municipal electric utility and a rural public power supplier.

RATE – A recurring charge, collected on a regular basis such as annually.

REPLACE or REPLACEMENT – In connection with an existing utility pole or support structure, to replace (or the replacement of) same with a new pole or structure, substantially similar in design, size and scale to the existing pole or structure and in conformance with this article and any other applicable codes, in order to address limitations of the existing pole or structure to structurally support collocation of a small

wireless facility.

RF MODIFICATION – Any equipment modification during the life of operation of the facility that changes the RF emissions generated from a small cell location. This shall require the applicant to provide the City with a new Radio Frequency Emission Certification and supporting documentation of compliance with FCC requirements.

RIGHT OF WAY – The area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in Section 39-1302, the National System of Interstate and Defense Highways, or a private easement.

SITE TRIANGLE ZONE – An area defined by a triangle with legs of thirty (30) feet from the point at which the curbs or edges of two intersecting streets, private ways, trails, sidewalks, courts or an intersecting street, private way, trail, sidewalk or court and driveway meet.

SHOT CLOCK – The period of time in which the City is required to act on an application.

SMALL WIRELESS FACILITY – Any wireless facility that meets each of the following conditions: (1) The facilities (a) are mounted on structures fifty (50) feet or less in height including the antennas or (b) are mounted on structures no more than ten (10) percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three (3) cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than twenty-eight (28) cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. part 17; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x); 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).

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.

TECHNICALLY FEASIBLE – By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location, can be implemented without a reduction in the functionality of the small wireless facility.

UTILITY POLE or POLE – A pole located in the right-of-way that is used for wireline communications, lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right-of-way. Utility pole does not include (1) support structures, (2) any transmission infrastructure owned or operated by a public power supplier, and (3)

any distribution or communications infrastructure owned or operated by a public power supplier.

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

WIRELESS INFRASTRUCTURE PROVIDER – Any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or support structures, but that is not a wireless services provider.

WIRELESS PROVIDER – A wireless services provider or a wireless infrastructure provider when acting as a coapplicant for a wireless services provider.

WIRELESS SERVICES – Any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.

WIRELESS SERVICES PROVIDER – A person who provides wireless services.

WIRELINE BACKHAUL FACILITY – An above-ground or underground facility used to transport communications services from a wireless facility to a communications network.

Sec. 28-3. Applicability.

This article shall apply to all deployments of small wireless facilities on rights of way or other public or private property within the City and its two-mile extraterritorial jurisdiction, as amended or annexed from time to time, except as specifically excluded in this section or in this article. This article shall not apply to any facility that was in existence and authorized by an agreement with the City as of the effective date of this article. Notwithstanding this section, the shot clock for an application shall be governed by this article or by an existing agreement, whichever provides for a shorter shot clock. Notwithstanding this section, application fees and yearly rates shall be governed by this article or by an existing agreement, whichever provides for smaller fees or rates. Small wireless facilities shall be governed by this article, and not by other lease requirements of

the City or this Code. This article shall not apply to the design, engineering, construction, installation, or operation of any small wireless facility located in the interior structure or upon the site of any college or university campus, stadium, or athletic facility not owned or controlled by the City, other than to comply with applicable codes. For an application submitted to the State of Nebraska regarding a location within right of way or other property owned or controlled by the State, to the extent that the State seeks a recommendation from the City regarding such application, the City shall apply the location and design standards of section 28-11. The applicant for a location on such State right of way or other property shall provide to the City a copy of the application submitted to the State.

Sec. 28-4. Permit required.

It shall be unlawful for any person to install, maintain, or operate a small wireless facility, unless such person shall have previously obtained a permit under this article from the City expressly authorizing such small wireless facility. It shall be unlawful for any person to collocate a small wireless facility on or associated with an existing utility pole or support structure, unless such person shall have previously obtained a permit under this article from the City expressly authorizing the attachment or association of that specific small wireless facility. It shall be unlawful for any person to construct, install, replace, maintain, or operate a new utility pole or support structure to which will be attached or associated a small wireless facility, unless such person shall have previously obtained a permit under this article.

Sec. 28-5. Application.

- (a) Form and content. Application for a permit under this article shall be filed with the Community Development Department, on a form provided by that department. On or in addition to that form, an application shall include the following:
 - (1) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the applicant.
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the application.
 - (3) A description of the proposed work and the purposes and intent of the proposed small wireless facility.
 - (4) If applicable, written authorization from the owner of the utility pole or support structure on which the small wireless facility will be placed or attached, if not the City. For a utility pole or support structure owned or controlled by an entity other than the City, the applicant shall provide proof

of approval of the specific plans by that owner.

(5) Complete Construction plans for proposed infrastructure bundled into a single PDF file, formatted to 11"x17" (The City recommends each pole has a separate set of plans within the overall file, in order that if any single pole is removed from the application, the remaining plan set remains valid); including:

A. A cover sheet with pole title, name, address(es), information containing a scaled City map including all pole locations included in the subject application, a list of each pole location including the GPS coordinate and a legend for all sheets.

B. Each pole plan set shall include the following:

1. Labeled and dimensioned site plan and elevation plan, including the following when applicable:

- i. Key symbols, ROW lines, property lines, etc.
- ii. Street information and topographic information, including existing and proposed utilities both public and private.
- iii. Identification of immediately adjacent property owner(s) and/ or easements
- iv. Structural Plans for pole and associated foundations that reference structural calculations and include geotechnical reports, depth, diameter, grounding, reinforcing, 4,000 psi concrete, etc.
- v. Pole dimensions and heights along with the construction materials, type, color and finish.
- vi. All dimensions of any pole attachments.
- vii. Proposed voltage, maximum transmission wattage, radio frequency and Microwave expulsion for all equipment associated with each pole, as allowed under FCC regulations along with documentation of compliance for RF emissions.
- viii. All detail required to clarify the proposed fiber,

communication and electrical construction to be completed.

- C. Appropriate pole and foundation structural calculations, signed and stamped by a Licensed Professional Engineer (PE) in Nebraska, to the most stringent of the following design standard(s):
 - 1. American Association of State and Highway Transportation Officials ("AASHTO") Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals (AASHTO LTS), 6th Edition, with 2015 Interim Revisions
 - 2. Design and wind speed to comply with TIA-222 as adopted by the City (IBC).
 - D. Small Cell Program Proposed Pole Location Map with street names and other key guideline concerns (i.e., historical and other areas of interest, waterways, etc.).
 - E. Address of each pole in the submittal and the approximate location of each pole referenced from official City Street surface features and latitude and longitude GPS coordinates.
 - F. Copy of all required insurance and indemnification certificates.
 - G. Radio Frequency Emission Certification documenting FCC compliance for RF Emissions for each proposed network node signed by a Telecommunications Engineer certified by the International Association for Radio, Telecommunications and Electromagnetics (iNARTE) or similarly recognized certifying body with experience regarding radio frequency transmissions.
- (6) To the extent the proposed small wireless facility involves collocation on a utility pole or support structure, a structural report performed by a duly licensed engineer evidencing that the pole or support structure will structurally support the collocation (or that the pole or support structure will be modified to meet structural requirements) in accordance with applicable codes.
- (7) For any new above ground antenna equipment, accurate visual depictions and locations, if not included in the construction drawings.
- (8) A full description of any make-ready work to be performed by the City in preparation for the proposed installation and use of the small wireless

facility, associated equipment and utility pole or support structure.

(9) The application fee as required by this article.

(10) Bond and certificate of insurance as required by this article.

(11) The application form shall include:

- A. Language providing for the indemnification of the City by the applicant as required by this article; and
- B. An attestation by the applicant that the small wireless facility shall be operational for use by a wireless services provider within nine (9) months after the later of the completion of all make-ready work or the permit issuance date, unless a delay is caused by lack of commercial power or communications transport facilities to the site, in which case the deadline shall be extended for up to nine (9) months.

(b) **Batching.** An applicant may apply for more than one (1) but no more than five (5) small wireless facilities in a single application, provided that all information required by this section is provided for each separate small wireless facility. Application fees shall be paid for each small wireless facility, as provided in this article.

(c) **Replacement or modification.**

(1) A permittee shall be required to file an application and pay an application fee for the proposed replacement or modification of an existing small wireless facility, antenna equipment, or associated utility pole or support structure. In such case, the application shall include updated drawings of the facilities showing such replacement or modification. Such proposed replacement or modification shall be reviewed and acted upon by the City as if it were an initial application.

(2) As a condition for placement, the applicant shall:

- A. inspect per TIA-222 as required and maintain all equipment and appurtenances in a timely and responsible manner;
- B. remove all graffiti placed on any of its network nodes, transport facilities, poles, or other property or equipment located in the public right of way;
- C. promptly repair any damage resulting from the installation,

repair, modification, removal, operation, and use at a small cell facility to its original condition. The City may opt to perform the repair and charge the permit holder if the permit holder fails to respond to a notice requiring repair, or when the public is in imminent danger;

- D. remove all non-operational small cell antennas, support poles, transport facilities, and associated equipment within twelve (12) months after abandonment of the facility; and
- E. applicant shall notify City in writing not less than thirty (30) business days prior to removal of a small cell if removed at applicant's own discretion.

The permit holder shall obtain all permits required for relocation or removal prior to relocation or removal.

(d) Shot clock. The City shall act on a filed application, and all associated requests, on or before the expiration of the shot clock period.

(1) The shot clock period for an application is the sum of:

- A. Ninety (90) calendar days, plus an additional ten (10) business days if requested in writing by the City prior to the expiration of the ninety (90) calendar days, plus,
- B. Such additional number of days of the tolling period, if any, pursuant to subsection (d)(2) below.

(2) Unless a written agreement between the applicant and the City provides otherwise, the tolling period for an application, if any, is as set forth below:

- A. Upon the submission of an incomplete application, the City shall notify the applicant on or before twenty business days (20) after submission that the application is incomplete; and shall identify the missing documents or information. Upon submission of the missing documents or information by the applicant, the shot clock date calculation shall restart at zero (0) once the City determines that the application is complete.
- B. Subsequent findings of incompleteness shall further toll the shot clock from the time the City sends written notice of incompleteness until the time the applicant provides the missing information.

- C. If the applicant submits new or additional documents or information that include material changes not otherwise required by the City, a new application and application fee shall be submitted.
- (3) The shot clock deadline for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to this Article; provided, that if the deadline calculated in this manner falls on a weekend or holiday, the deadline shall be the next business day after such date. The term "business day" means any day that is not a weekend day or holiday.
- (e) Permit issuance. Approval of an application authorizes the permittee to maintain and operate the small wireless facilities and any associated utility pole covered by the permit for a period of five (5) years, subject to applicable relocation requirements and the permittee's right to terminate at any time. At the end of each such term, such permit shall be considered automatically renewed for an equivalent duration so long as the permittee complies with the criteria of this article as of the time the permit was issued.

Sec. 28-6. Fees.

- (a) Application fees.
 - (1) The application fees for a permit under this article for a small wireless facility shall be established by resolution adopted by the City Council.
 - (2) An application for a permit for a new, modified, or replacement utility pole or support structure intended to support one or more small wireless facilities shall be established by resolution adopted by the City Council.
- (b) Annual rates. A permittee who does not pay the City any occupation taxes under Section 24-16 of this Code shall pay to the City an annual rate established by resolution adopted by the City Council for each small wireless facility attached to a utility pole in City right of way, and an annual rate established by resolution adopted by the City Council for each small wireless facility located anywhere else in City right of way or City property. A permittee who does pay the City any occupation taxes under Section 24-16 of this Code shall not be required to pay to the City an annual rate. The annual rate shall be paid by or before January 1, in advance for the ensuing year.
- (c) Reimbursement of direct costs. If the applicant or permittee excavates or damages City right of way or other City property and the City repairs such excavation or

damage, the applicant or permittee shall reimburse to the City the actual cost of such repair, as provided in Section 28-10.

Sec. 28-7. Interference, removal, and abandonment.

- (a) In the event that any facility of a permittee on City right of way or City property obstructs or hinders the usual travel or public safety or obstructs the legal use of such right of way or property by utilities or other authorized users, the City may provide written notice to the permittee of such interference and of the need to resolve such interference. In the event that any such facility of the permittee causes any radiofrequency interference to any City facilities or other uses of City right of way or City property, the City may notify the permittee in writing of such interference and the need to resolve such interference. Upon service of any notice under this subsection, the permittee shall remedy such interference within ninety (90) calendar days or, in the case of an emergency, within such shorter time period as directed by the City. If such interference is not resolved in a timely manner, the permittee shall, at its own expense, remove its facilities from that location. In such case, the permittee may apply for the relocation of similar facilities at another location, without payment of an application fee.
- (b) Within ninety (90) calendar days following written notice from the City, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its facilities, whenever the City has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any City improvement in, under or upon the public right of way. The permittee shall be responsible to the City for any damages or penalties the City may incur as a result of the permittee's failure to remove or relocate the facilities as required in this subsection.
- (c) The City retains the right and privilege to cut or move any facility of the permittee located within the public right of way or on City property, as the City may determine in its sole discretion to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the City shall notify the permittee and give the permittee an opportunity to move its own facilities prior to cutting or removing the facilities. In all cases the City shall notify the permittee after cutting or removing the facilities as promptly as reasonably possible.
- (d) The permittee may abandon its facilities at a location. The permittee shall notify the City of abandonment of any facility at the time the decision to abandon is made, but in no case shall such notification be made later than thirty (30) calendar days prior to abandonment. The permittee shall, within thirty (30) calendar days of such notice, remove its facilities at the permittee's own expense, unless the City determines and states in writing, in its sole discretion, that any part of the facilities may be abandoned

in place. The permittee shall remain solely responsible and liable for all of its facilities until they are removed from the public right of way unless the City agrees in writing to take ownership of the abandoned facilities. For the purpose of this subsection, abandonment of facilities and cancellation of the related permit shall also be deemed to have occurred after such facilities are not used for a period of one (1) year.

- (e) If the permittee fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its facilities or remove any of its abandoned facilities as required in this section, the City or its contractor may do so. In such case, the permittee shall pay all reasonable costs related to such work.

Sec. 28-8. Indemnification.

In submitting an application and maintaining and operating its facilities, the permittee agrees to indemnify, defend and hold the City harmless from all claims, costs, damages, demands, suits, judgments, court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, permittee's acts or omissions pursuant to its permit or this article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this article. The application to be signed by the applicant shall contain the indemnification language stated in this section.

Sec. 28-9. Insurance.

- (a) Upon and after application, the permittee of a permit under this article shall procure and thereafter continuously maintain for as long as any permit in its favor remains in effect, at the permittee's expense, commercial general liability insurance with a limit of at least \$2,000,000 per occurrence and in the aggregate for bodily injury (including death) and damage to property, including explosion, collapse and underground property damage. The permittee shall notify the City of any prospective cancellation or reduction in coverage of the policy, at least ninety (90) calendar days in advance of the cancellation or reduction. A certificate of insurance shall be provided with the application. The policy shall be available for review by the City upon request. The policy shall name the City as additional insured.
- (b) Upon and after application, the permittee of a permit located on right of way or other City property shall provide and maintain in effect a bond with a surety, in favor of the City, in the minimum amount of \$50,000, to cover all permitted sites of the permittee. The surety of the bond shall be a surety company licensed to do business in Nebraska. The bond shall be conditioned:
 - (1) That the permittee and its successors or assigns shall indemnify, defend, and hold the City harmless from all claims, costs, damages, demands, suits,

judgments, and court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, permittee's acts or omissions pursuant to its permit or this article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this article.

- (2) For the maintenance of the sidewalk or public right of way.
- (3) For the compliance with all applicable laws regarding the permitted facilities and the use of the City right of way or other property.
- (4) For the return of the sidewalk, street, right of way or other public property to its condition prior to the permit.

Sec. 28-10. Permittee duties.

As a condition of the issuance of a permit under this article, the permittee shall perform the following duties:

- (a) Small wireless facilities and associated communications facilities, utility poles and support structures shall be located, installed and maintained so that they do not materially endanger the lives, health or safety of persons, or materially interfere with any public improvements the City or other governmental entities (including any traffic control devices or signs, gas, electric, storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make. The location, installation or maintenance of the small wireless facility and associated communications facilities, utility pole and support structure shall not hinder or obstruct the usual travel or public safety on right of way, or obstruct the legal use of right of way by utilities or the safe operation of their systems or provision of service.
- (b) All small wireless facilities and associated communications facilities, utility poles, and support structures shall be located, installed, and used so as to cause minimum radiofrequency or other interference with the rights and reasonable convenience of other users of rights of way and of owners' property which adjoins rights of way.
- (c) All construction, excavation, maintenance and repair work done by the permittee shall be done in a safe, workmanlike and expeditious manner which minimizes inconvenience and danger to the City, the general public and individuals. All such construction, excavation, maintenance, and repair work done by the permittee shall comply with all applicable codes and laws. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes, laws, and permits, and may order the permittee to perform corrective work. All right of way or other City property disturbed by permittees' activities shall be promptly restored

by the permittee at its expense to its former condition, subject to inspection by the City. If the permittee fails to make required repairs, the City may give the permittee written notice of the required repairs. If after such notice the permittee fails to make the required repairs within fourteen (14) calendar days, the City may make the repairs, and permittee shall pay the City the reasonable cost of such repairs. The City shall grant the permittee a ten (10) calendar day extension to perform repairs if requested by the permittee within the original fourteen (14) calendar day period. In the event of immediate threat to life, safety, or to prevent serious injury, the City may immediately undertake to restore the site and then notify the permittee and charge the permittee for all reasonable restoration costs.

- (d) The permittee shall install, construct, maintain, and operate its small wireless facilities and associated communications facilities, utility poles, and support structures in a safe manner providing reasonable protection against injury or damage to any and all persons or property.
- (e) Unless otherwise specified in the permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Manual on Uniform Traffic Control Devices. The permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is filled and finished to the satisfaction of the City, or as otherwise directed by the City.
- (f) All construction and use of the small wireless facilities and associated communication facilities, utility poles, and support structures shall comply with the permit and approved final plans and specifications. Upon completion of installation of the small wireless facilities and associated communication facilities, utility poles and support structures, the permittee shall notify the Community Development Department within three (3) business days of the completion of said work so that the City may conduct an inspection as provided for above. Any construction that does not conform to the permit and approved final plans and specifications shall be reconstructed or repaired to conform to the permit and approved final plans and specification within five (5) business days. If the construction and use of the small wireless facilities and associated communication facilities, utility poles, and support structures continues to fail to conform to the permit and approved final plans and specifications, the City may revoke the associated permit until such time as the work is in conformance.
- (g) If a new utility pole or support structure is to be built for the sole or primary purpose of supporting a small wireless facility, such pole or structure shall comply with all applicable codes.

Sec. 28-11. Location and design standards.

(a) The City desires to promote aesthetically acceptable and area conforming wireless facilities using the smallest and least intrusive means available to provide small wireless services to the community. All facilities in the public right of way must comply with all applicable provisions in this section. All small wireless facilities shall meet the following requirements:

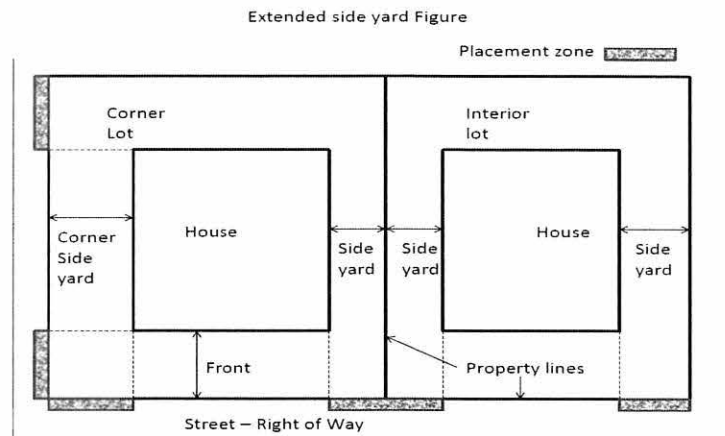
- (1) New small cells shall match existing, adjacent streetscape character.
- (2) When proposed in a "Special" District or neighborhood that maintains unique streetlight aesthetics, the applicant must consider and propose infrastructure that most closely matches adjacent themed infrastructure to the maximum extent feasible.
- (3) Applicant must demonstrate the structural ability of the poles (existing or new) to accommodate small cell facilities. If not structurally capable, it is expected that the Applicant will be responsible for replacing any existing pole.
- (4) Small wireless facilities shall be constructed, operated, maintained, repaired, removed, 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, structural, transportation, 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.
- (5) Antennas must be top-mounted and concealed within a radome (a structural, weatherproof enclosure that protects an antenna and is constructed of material that minimally attenuates the signal transmitted/received by such antenna) or otherwise concealed to the extent feasible. Cable connections, antenna mounts and other hardware must also be concealed. The radome or other concealment elements must be non-reflective and painted or otherwise colored to match the existing support structure.
- (6) The antenna shall be no more than three (3) cubic feet in volume. All other equipment associated with a small wireless facility, whether ground-mounted

or pole-mounted, shall be no more than twenty-eight (28) cubic feet in volume.

- (7) The color of the small wireless facility shall reasonably match the color of the utility pole or support structure upon which it is attached.
- (8) There shall be no advertising or signs on the small wireless facility, except for equipment logos, specifications, or maintenance instructions that are generally not readable from the ground or from ten (10) feet away.
- (9) A small wireless facility shall be mounted at a height no more than the greater of (A) fifty (50) feet, including the antenna, or (B) five (5) feet above an existing utility pole in place as of the effective date of this article and located within five hundred (500) feet in the same right of way.
- (10) Cantennas shall be no more than twelve (12) inches in diameter and forty-eight (48) inches in height.
- (11) If the antenna of the small wireless facility is side-mounted, it shall not protrude more than eighteen (18) inches outside the pole, and shall not exceed the height of the pole.
- (12) The small wireless facility and all associated equipment mounted to the outside of a pole or support structure shall be at least eight (8) feet above grade, excluding the disconnect switch.
- (13) Collocations between wireless service providers on the same support structure is required wherever feasible. If an applicant chooses to not collocate in areas where options are or appear to be available, the applicant must document that collocation is infeasible.
- (14) Cabling shall be located within conduit or inside the pole or support structure to as great a degree as possible, and otherwise shall be as flush to the pole or support structure as possible. Any support arms shall use flanges or channels to conceal exterior cables and passive radiofrequency gear. Shrouds, sleeves, or ninety (90) degree connectors shall be used to prevent exposed cables.
- (15) A small wireless facility shall include a disconnect switch. The disconnect switch shall be no more than twelve (12) cubic inches in size, shall be painted the same color as the pole or support structure, and shall be mounted on the pole or support structure at a maximum of six (6) feet above grade.
- (16) Unless otherwise required by the City, or for compliance with FAA or FCC regulations, small wireless facilities shall not include any lights or lighting.

(17) All proposed Freestanding Small Cell Infrastructure shall be located:

- (a) In a manner or location that does not: obstruct, impede, or hinder the usual pedestrian or vehicular travel, adversely affect public safety or impair the legal access and use of the public right-of-way. The small cells must be constructed per applicable law and with public ROW design standards, specifications, or design requirements and not violate the federal Americans With Disabilities Act of 1990, or in any way create a risk to public health, safety, or welfare;
- (b) In a manner that does not significantly create a new obstruction to primary and inherently valuable sightline(s) of an adjacent property;
- (c) In alignment with existing trees, utility poles, and streetlights and placed to avoid disturbance within the critical root zone of any tree;
- (d) In the right-of-way, but placed within the extended side yard setback zones of the adjacent property, (See Figure);
- (e) With a recommended separation of a minimum of two hundred fifty feet (250') from any other Small Cell facility to the extent allowed by law;
- (f) Other than along the frontage of properties designated as Federal, State or Local Historic Landmarks unless otherwise approved by the City;
- (g) With separation from any low-pressure natural gas line, intermediate or high-pressure natural gas line and with appropriate clearance as approved from all existing utilities;
- (h) So as not to impact any existing bridges, culverts, or retaining walls;
- (i) Outside of all AASHTO clear zones and outside of clear sight triangles (at a minimum) as follows:
 - 1. 5-foot leg pedestrian sight triangle at each residential driveway;
 - 2. 10-foot leg pedestrian sight triangle at each driveway and alley;



3. 30-foot leg corner sight triangle;
 4. Roadway sight triangles shall be based on AASHTO standards for each driveway, alley, and intersection; and
- (j) In a manner that does not impede, obstruct, or hinder operation of any emergency service, nor the usual pedestrian or vehicular access or travel including to or from private properties.
- (b) All proposed Freestanding Small Cell Infrastructure shall be designed to comply as follows:
- (1) To camouflage and conceal to the maximum extent feasible all proposed equipment within proposed freestanding antenna pole(s) as applicable without use of faux trees, faux landscaping, or other faux decorative items, and consolidate any remaining equipment within approved singular enclosures;
 - (2) To meet the following size limitations of equipment:
 - A. Any new freestanding antenna pole shall be consistent in height with poles in the vicinity plus an additional five (5) feet, with a maximum height of fifty (50) feet unless otherwise approved by City.
 - B. All antenna and all of the antenna's exposed elements and/ or shroud transitions shall be mounted at the top of the proposed pole with the following criteria:
 1. All contents, wires, and cables shall be visually concealed; and
 2. The antenna shroud may not exceed a height of five (5) feet.
 - C. All remaining equipment to be located at the pole including radios not mounted at the top of the pole, electric meters, grounding equipment, cut-off switches, etc. shall be placed below grade to the maximum extent technically feasible and when it is not feasible to place below grade, shall be fully enclosed within a base shroud that:
 1. Is structural to fully support the pole while maximizing equipment volume;
 2. Is cylindrical and is as small as feasible with a maximum consistent diameter of thirty (30) inches;

3. Does not exceed a height of six (6) feet from mounting surface; and
 4. Matches pole color, finish, and be as solid as feasible to visually conceal and lock all contents and/ or wiring.
- D. Any equipment attached to support poles must be mounted so that all parts are at least seven (7) feet or higher above adjacent surface grade and be the least visually intrusive as feasible.
 - E. If relief is granted to allow above ground mounted enclosures, they may not be greater than three feet six inches (3'-6") in any dimension.
- (3) No generators will be required to support power demands for proposed infrastructure;
 - (4) No advertising signage or banners will be located upon the poles or antennas;
 - (5) All utilities, wires, and cables shall be enclosed and placed underground. No overhead lines or support cables are allowed. One possible exception, may connect to aerial transport facilities for which an attachment right has been granted for attachment to the utility pole by the utility pole owner;
 - (6) Provide identifying information, and an emergency telephone number for the owner of each facility on an imprinted/etched on 4"x6" metallic sign permanently mounted on the small cell pole at approximately four (4) to six (6) feet from ground level so as to be visible to the public and onto any associated ground mounted equipment, in addition to any other signage required by law (e.g. RF ground notification signs); and
 - (7) The small cell will cause no interference to the City's radio and emergency radio frequencies, and will be in compliance with FCC interference requirements. Applicant shall document the proposed frequency or frequencies at the site.
- (c) A new or replacement utility pole for a small wireless facility, referred to in this subsection as a "new pole," shall be subject to the following requirements:
- (1) The new pole shall meet the generally applicable standards for such poles as established by the owner of such poles.
 - (2) The new pole shall comply with applicable codes of general applicability.

- (3) The new pole shall be substantially similar in color, diameter, material, style, and arm structure of the nearest adjacent existing poles; provided, that there shall be no new installations of wooden poles.
- (4) A new pole replacing an existing decorative pole shall conform to all non-discriminatory design aesthetic features of the existing decorative pole.
- (5) The height of a new pole shall not exceed the greater of (A) five (5) feet above the tallest existing utility pole in place as of the effective date of this article located within five hundred (500) feet of the new pole in the same right of way, or (B) fifty (50) feet above ground level.
- (6) The diameter of the new pole shall be no more than fourteen (14) inches; provided, that the bottom sixty-six (60) inches of the new pole may be no more than eighteen (18) inches in diameter.
- (7) The new pole shall be in alignment with existing trees, utility poles, and streetlights.
- (8) The new pole shall be an equal distance between trees when possible, with a minimum of fifteen (15) feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
- (9) The new pole shall be placed with appropriate clearance from existing utilities, to accommodate the passage of traffic in the right of way and any work done on or around the facilities.
- (10) The new pole shall be placed outside of a thirty (30) foot clear site triangle zone where pedestrian trails, sidewalks, and streets intersect(s).
- (11) The new pole shall be placed so as not to be located along the frontage of a Historic District.
- (12) The new pole shall not be placed within fifty (50) feet of the apron of a fire station or other emergency service responder facility.
- (13) In accordance with existing standards for street light poles, a new pole shall be located no closer than one hundred fifty (150) feet from an existing street light pole on an arterial or collector street, and no closer than one hundred (100) feet from an existing street light pole on a local or residential street. This requirement shall not prevent the replacement of light poles in place as of the effective date of this articles that do not meet this spacing requirement.
- (14) A new pole shall not be located within seven (7) feet of an electrical conductor unless the applicant obtains the written consent of the entity that owns or

manages the electrical conductor.

(d) All small wireless facilities, and all of their associated equipment, ground equipment, communications facilities, and utility poles and support structures, shall comply with the following requirements:

(1) So as not to impede or impair public safety or the legal use of the right-of-way by the traveling public, ground mounted equipment must be installed below grade or concealed in a ground-mounted cabinet. Ground mounted cabinets must comply with the following design standards:

- A. In urban sections with curb and gutter, ground mounted equipment shall not be located closer than four (4) feet from the pavement or face of curb, and shall not be located closer than two (2) feet from a sidewalk, bike lane, or shared-use path as measured to the nearest part of the equipment.
- B. In rural sections with open ditches, ground mounted equipment shall be located at least one (1) foot inside the right-of-way line.
- C. Ground mounted equipment shall be placed outside of all site triangle zone(s).
- D. Ground mounted equipment locations shall be located a minimum of twelve (12) feet from driveway aprons as measured parallel to the right-of-way.
- E. Ground mounted equipment must be secured to a concrete foundation or slab with a breakaway design allowing the equipment to disconnect from the foundation in the event of collision or impact.
- F. Screening of ground mounted equipment with a variety of plant material may be required based on the characteristics of the surrounding area.
- G. All proposed ground mounted equipment shall be reviewed for determination of applicability of the City's generally applicable landscape screening requirements based on the surrounding context, and where required, for appropriateness of the proposed planting plan and plant specifications.

(2) Such items shall not materially interfere with sight lines or clear zones for air or land transportation or pedestrians.

- (3) Such items shall not obstruct or hinder the usual travel or public safety on right of way, or obstruct the legal use of right of way by utilities or the safe operation of their systems or provision of service.
- (4) Such items shall not violate or materially interfere with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement.
- (5) Such items shall comply with applicable codes of general applicability.

(e) Conformance with Special District Requirements

A Special District is an area within the City with a City Code designation for which unique design, development and aesthetic standards may be applied uniformly.

(f) General Luminaries Criteria

Street lighting luminaries shall comply with lighting specifications for the City. Construction of small cell infrastructure shall have no impact on the street lights operational performance.

Sec. 28-12. Make-ready work.

- A. In its application, the applicant shall identify any make-ready work proposed to be performed by the City. Within one hundred twenty (120) calendar days after receipt of a completed application, the City shall provide a preliminary good faith estimate of the cost of such make-ready work to be paid by the applicant to the City. The applicant shall pay to the City the amount of the estimated cost. Make-ready work to be performed by the City shall be completed within ninety (90) calendar days after written acceptance of the good faith estimate by the applicant. Upon the City's completion of the make-ready work, the applicant shall pay the City, or the City shall refund to the applicant, as the case may be, the difference between the cost estimate paid and the actual cost. Total fees shall not exceed actual costs of the make-ready work. Alternatively, the City and the applicant may agree that the applicant or a party other than the City may perform the make-ready work, subject to the City's approval before and after the work.
- B. The City may require replacement of the utility pole if it determines that the collocation would make the utility pole structurally unsound. The person owning the utility pole shall not require more make-ready work than required to meet applicable codes and industry standards. This requirement shall not prevent the replacement of light poles that are currently constructed within a clear zone at the time of the effective date of this ordinance.

Sec. 28-13. Assignment.

A permittee may assign its rights to a permit, small wireless facility, and associated equipment or structures it owns, to an assignee. Such assignment shall not be effective until the applicant and the assignee sign and file with the Community Development Department a notice of assignment, containing:

- A. The assignee's name, address, telephone number, and e-mail address, including emergency contact information.
- B. Exact location of all small wireless facilities and associated equipment or structures being assigned.

Sec. 28-14. Relief


Any Applicant desiring relief, waiver or exemption from any aspect or requirement may request such, provided that the relief or exemption is contained in the submitted Application. The burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. 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 effect on the health, safety and welfare of the City, its residents and other service providers."

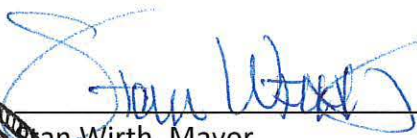
SECTION 2. That all ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED AND APPROVED this 21st day of December, 2020.

Attest:


Erin Saathoff, CMC, City Clerk


Stan Wirth, Mayor

