

**9.02.09 Revocation:**

1. **Conditions.** A home occupation and home based business permit granted in accordance with the provisions of this section may be terminated if the Planning Commission makes any of the following findings:
  - a. That any condition of the home occupation or home based business permit has been violated;
  - b. That the use has become detrimental to the public health or safety or is deemed to constitute a nuisance;
  - c. That the permit was obtained by misrepresentation or fraud;
  - d. That the use for which the permit was granted has ceased or has been suspended for six consecutive months or more; and
  - e. That the condition of the premises, or the district of which it is a part, has changed so that the use may no longer be justified under the purpose and intent of this section.
  - f. The Planning Commission then makes a recommendation to the City Council and the City Council shall make the final determination at a public hearing.
2. **Nontransferable.** A home occupation or home based business permit granted in accordance with the provisions of this article shall not be transferred, assigned, nor used by any person other than the permittee, nor shall such permit authorize such home occupation at any location other than the one for which the permit is granted.

**Section 9.03 Wireless Telecommunications Facilities Siting****PART A - WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE****9.03.01 Purpose and Legislative Intent**

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

**9.03.02 Title**

Article 9.03, Part A, shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the City of Fairbury, Nebraska, and herein referred to as Article 9.03, Part A.

**9.03.03 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Article 9.03, Part A, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of Article 9.03, Part A, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Any Conditional Use Permit issued for Wireless Telecommunications Facilities shall follow the Conditional Use Permit Rules and Procedures under Article 6.

**9.03.04 Definitions**

For purposes of Article 9.03, Part A, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this

section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A) "Accessory Facility" or "Structure" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
- B) "Applicant" means any Wireless service provider submitting an application for a Conditional Use Permit for Wireless Telecommunications Facilities.
- C) "Application" means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
- D) "Antenna" means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
- E) "Certificate of Compliance" means the certification from the City or the City's consultant that confirms the project was constructed and is in compliance with the conditions of the permit.
- F) "Collocation" means the use of an existing Tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonable short time frame after the new tower is constructed.
- G) "Commercial Impracticability" or "Commercially Impracticable" means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be "commercial impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".
- H) "Completed Application" means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.
- I) "Council" or "City Council" means the City Council of the City of Fairbury, Nebraska.
- J) "Distributed Antenna System or DAS" means 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.
- K) "Eligibility Facility" means a facility as defined in FCC 14-153.
- L) "Eligible Facility Permit" means the official zoning permit approved and issued by the Community Development Director for application which meets the definition of an eligible facility.
- M) "FAA" means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- N) "FCC" means the Federal Communications Commission, or its duly designated and authorized successor agency.
- O) "Height" means, when referring to a Tower or structure, the distance measured from the finished grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
- P) "Modification" or "Modify" means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components,

vehicular access, parking and/or an upgrade or 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 co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

Q) "NIER" means Non-Ionizing Electromagnetic Radiation.

R) "Person" means any individual, corporation, estate, trust, partnership, joint stock Company, association of two (2) or more persons having a joint common interest, or any other entity.

S) "Personal Wireless Facility" See definition for 'Wireless Telecommunications Facilities'.

T) "Personal Wireless Services" or "PWS" or "Personal Telecommunications Service" or "PTS" shall have the same meaning as defined and used in the 1996 Telecommunications Act.

U) "Planning Commission" means the Planning Commission for the City of Fairbury.

V) "Repairs and Maintenance" means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

W) "Right-of-Way" means the area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in Neb. Rev. Stat. Section 39-1302, the National System of Interstate and Defense Highways, or a private Easement.

X) "Small wireless facility" means a wireless facility that meets each of the following conditions: (1) the facilities (a) are mounted on structures 50 feet or less in height including the antennas or (b) are mounted on structures no more than 10 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 28 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.

Y) "Specialized Mobile Radio" or "SMR" means an analogue or digital trunked two-way radio system, operated by a service in the VHF, 220, UHF, 700,800 or 900 MHz bands.

Z) "State" means the State of Nebraska.

AA) "Stealth" or "Stealth Technology" means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or Commercially Impracticable under the facts and circumstances.

BB) "Telecommunications" means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

CC) "Telecommunications Site" See definition for Wireless Telecommunications Facilities.

DD) "Telecommunications Structure" means a structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities'.

EE) "Temporary" means temporary in relation to all aspects and components of Article 9.03, Part A, something intended to, or that does not exist for more than one hundred and eighty (180) days.

FF) "Tower" means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

GG) "Wireless Telecommunications Facilities" or "WTF" means and includes a "Telecommunications Site" and "Personal Wireless Facility". It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

#### **9.03.05 Overall Policy and Desired Goals for Eligible Facility and Conditional Use Permits for Wireless Telecommunications Facilities**

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the City's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in Article 99.03, Part A, the City hereby adopts an overall policy with respect to an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

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

#### **9.03.06 Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities Required; Exceptions**

A) Except as otherwise provided by Article 9.03, Part A, no Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of June, 2022, without having first obtained either an Eligible Facility Permit or a Conditional Use Permit for Wireless Telecommunications Facilities prior to the application for a building permit. Notwithstanding anything to the contrary in this section, no Permits for Wireless Telecommunications Facilities shall be required for those non-commercial exclusions noted in Section 9.03.07.

B) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before Date, 2022, shall be allowed to continue as they existed, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this Article 9.03, Part A.

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

#### **9.03.07 Exclusions**

The following shall be exempt from Article 9.03, Part A:

A) The City's fire, police, department of transportation or other public service facilities owned and operated by the local government.

B) Any facilities expressly exempt from the City's siting, building and permitting authority.

C) Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.

D) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.

E) Facilities 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 less than 200'.

F) Small Wireless Facilities located in a right-of-way. Said right-of-way shall be deemed governed by the provisions of Neb. Rev. Stat. Section 86-1201 to Section 86-1244 known as the Small Wireless Facilities Deployment Act and by Article 9.03B and §93.003 of the City of Fairbury Municipal Code.

#### **9.03.08 Eligible Facility Permit and Conditional Use Permit Application and Other Requirements.**

A) All Applicants for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in Article 6 and Article 9.03, Part A, of the Zoning Ordinance. Applications for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities must be made pursuant to Article 6 and Article 9.03, Part A, of the Zoning Ordinance. Upon the recommendation from the Planning Commission, the City Council is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Eligible Facility Permit or Conditional Use Permits for Wireless Telecommunications Facilities. The City may at its discretion delegate or designate other official agencies or officials of the City to review, analyze, evaluate and make recommendations to the Planning Commission and the City Council concerning matters involving Eligible Facility Permit or Conditional Use Permits for Wireless Telecommunications Facilities.

B) All applications for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall be filed with the Community Development Director's office pursuant to Article 6.

C) The City may reject applications not meeting the requirements stated herein or which are otherwise incomplete.

D) No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the City, and the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities has been issued.

E) Any and all representations made by the Applicant to the City on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the City.

F) An Application for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.

G) The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

H) The Applicant shall include a statement in writing:

1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities, without exception, unless specifically granted relief by the City in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable City, State and Federal Laws, rules, and regulations;

2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.

I) Where a certification is called for in Article 9.03, Part A, such certification shall bear the signature and seal of a Registered Professional licensed in the State.

J) In addition to all other required information as stated in Article 9.03, Part A, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.

1) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;

2) Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the city. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in service or existing sites that demonstrate a significant gap in coverage and/or a capacity need, including an analysis of current and projected usage; for a new tower drive test data is required. If documentation is provided by the applicant that this site qualifies as an Eligible Facility, proof of need is not required;

3) The name, address and phone number of the person preparing the report;

4) The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;

5) The postal address and tax map parcel number of the property;

6) The Zoning District or designation in which the property is situated;

7) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;

8) The location and distance to the nearest residential structure;

9) The location, size and height of all existing and proposed structures on the property which is the subject of the Application;

10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;

11) The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;

12) The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;

13) The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users;

14) A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above finished grade, materials, color and lighting;

15) The frequency, modulation and class of service of radio or other transmitting equipment;

16) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;

17) Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;

18) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;

19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;

20) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site or other structures used in conjunction with or as an alternative to a tower and if existing Tower or structure, a copy of the installed foundation design.

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

L) Additional requirements for an Application for New Tower.

1) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the City in the Application, along with any letters of rejection stating the reason for rejection.

2) In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the City. The Applicant shall inform the City, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application.

3) The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future colocations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:

- a) The foreseeable number of FCC licenses available for the area;
- b) The kind of Wireless Telecommunications Facilities site and structure proposed;
- c) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
- d) Available space on existing and approved Towers.

4) Upon completing construction and before the issuance of the Certificate of Compliance, to ensure the tower was constructed as permitted, the applicant is to provide signed documentation of the Tower condition per the requirements of ANSI/TIA/EIA-222 (adopted by reference in the building code). Annex for Tower Maintenance, Condition Assessment and Inspection Procedures. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

5) The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:

- a) Respond within 60 days to a request for information from a potential shared-use Applicant;
- b) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
- c) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference;
- d) Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit for Wireless Telecommunications Facilities.

M) The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, city, state and federal structural requirements for loads, including wind and ice loads.

N) If application is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition per the requirements of ANSI/TIA/EIA-222 (adopted by reference in the building code). Annex for Tower Maintenance, Condition Assessment and Inspection Procedures. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

O) All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.

P) If the application is for a new Tower, a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:

- 1) If a new Tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.
- 2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the city as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
- 3) A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

Q) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility.

R) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the City.

S) 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 most recently adopted versions of the National Electrical Safety Code and the National Electrical Code where appropriate.

T) At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

U) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

V) A holder of an Eligible Facility Permit or Conditional Use Permit for a Wireless Telecommunications Facilities granted under Article 9.03, Part A, 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 ARTICLE 9.03: WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE number effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.

W) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.

X) An Applicant shall submit to the City the number of completed Applications determined to be needed.

Y) The holder of an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall notify the City of any intended Modification of a Wireless Telecommunication Facility and shall apply to the City to modify, relocate or rebuild a Wireless Telecommunications Facility.

#### **9.03.09 Location of Wireless Telecommunications Facilities**

A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority of selection and ten (10) being the lowest priority.

- 1) On existing Towers or other structures on city owned properties, including the right-of-way.
- 2) On existing Towers or other structures on other property in the City.
- 3) A new Tower on City-owned properties, including the right-of-way.
- 4) A new Tower on property in areas zoned I-2, "Heavy Industrial District."
- 5) A new Tower on property in areas zoned I-1, "Light Industrial District."
- 6) A new Tower on property in areas zoned AG, "Agricultural District."
- 7) A new Tower on property in areas zoned C-3, "Highway Commercial District."
- 8) A new Tower on property in areas zoned C-2, "General Commercial District or C-1 Downtown Commercial District."
- 10) A new Tower on property in areas zoned R-1, "Low Density Residential District", R-2, "Medium Density Residential District", R-3, "High Density Residential District", RM "Mobile Home District" and RCF, "Residential/Commercial Flex District."

B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the City why co-location is commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting colocation shall not be a valid basis for any claim of Commercial Impracticability or hardship.

D) Notwithstanding the above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.

E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.

F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an Application for any of the following reasons.

- 1) Conflict with safety and safety-related codes and requirements;
- 2) Conflict with the historic nature or character of a neighborhood or historical district;
- 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers;
- 5) Conflicts with the provisions of Article 9.03, Part A.

#### **9.03.10 Shared Use of Wireless Telecommunications Facilities and Other Structures**

A) The City, as opposed to the construction of a new Tower, shall prefer locating on existing Towers or others structures without increasing the height. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.

B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.

C) Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the Cities jurisdictional district, to the extent practicable, unless good cause is shown.

#### **9.03.11 Height of Telecommunications Towers**

A) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies ARTICLE 9.03: WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE number must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown. The height limitations in this section shall supersede the height limitations set forth in the Fairbury Zoning regulations.

B) No Tower constructed after the effective date of Article 9.03, Part A, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with city, state, and/or any federal statute, law, local law, city ordinance, code, rule or regulation.

#### **9.03.12 Visibility of Wireless Telecommunications Facilities**

A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.

B) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of Article 9.03.

C) If lighting is required, Applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.

#### **9.03.13 Security of Wireless Telecommunications Facilities**

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

A) All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

B) Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

#### **9.03.14 Signage**

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

#### **9.03.15 Lot Size and Setbacks**

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

#### **9.03.16 Retention of Expert Assistance and Reimbursement by Applicant**

A) The City may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.

B) An Applicant shall deposit with the City funds sufficient to reimburse the City for all costs of the City's consultant in providing expert evaluation and consultation to any agency of the City in connection with the review of any Application, including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The Initial Deposit shall be \$5,000 for eligible facilities and modifications and \$8,500 for new towers, unless said amount has been modified by City Council Resolution. The placement of the Initial Deposit with the City shall precede the pre-application meeting. The City will maintain a separate account for all such funds. The City's consultants/experts shall invoice the City for its services related to the Application. If, at any time during the process this account has a balance less than 30% of the Initial Deposit, (the Minimum Account Balance), the Applicant shall immediately, upon notification by the City, replenish said account so that it has a balance of at least 50% of the Initial Deposit (the Replenished Account Balance). Such additional funds shall be deposited with the City

before any further action or consideration is taken on the Application. The Initial Deposit, Account Balance and Replenished Balance amounts may be modified by resolution of the Fairbury City Council. In the event that the amount held by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant. If notified by the City that additional funds are required, the Applicant may request copies of Consultants' and/or experts' invoices. If the Applicant finds errors in those invoices, Applicant may ask the City to audit those specific items for reasonableness and may request relief there from if not deemed reasonable by the City.

C) Notwithstanding the above, there shall be a cap of \$17,000 as to the total consultant fees to be charged to applicant in a case. The foregoing does 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.

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

#### **9.03.17 Public Hearing and Notification Requirements**

The procedure for obtaining a Conditional Use Permit for Wireless Telecommunications Facilities shall follow the procedure set forth in Article 6, of the Fairbury Zoning Ordinance with the exception that no public hearing or notifications are required for Eligible Facility applications. The procedures of Article 6 are amended for purposes of Conditional Use Permits for Wireless Telecommunication Facilities to require written notice of such public hearing to be given to the owners of all real estate located within 500 feet of the real estate, which is the subject of the Conditional Use Permit for Wireless Telecommunication Facilities.

#### **9.03.18 Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities**

A) The City will undertake a review of an Application pursuant to the Conditional Use Permit procedure of Article 6 and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.

B) Except as modified herein, the Conditional Use Permit Procedure of Article 6 of the Zoning Ordinance shall be followed. The decision of the City Council shall be set forth in the minutes and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of a Conditional Use Permit for Wireless Telecommunications Facilities shall always be upon the Applicant.

C) If the City denies the Conditional Use Permit for Wireless Telecommunications Facilities or if such an ordinance fails to pass, then the Applicant shall be notified of such denial or failure to pass, in writing, within ten (10) calendar days of the City's action.

#### **9.03.19 Action on an Application for an Eligible Facility Permit for Wireless Telecommunications Facilities**

A) Authorization of an Eligible Facility Permit. For any Eligible Facility Permit application, a complete application shall be approved by the Community Development Director or his or her designee only if he or she determines that such complete application is in compliance with Article 9.03, Part A.

B) The burden of proof for the granting of an Eligible Facility Permit for Wireless Telecommunications Facilities shall always be upon the Applicant.

C) If the City denies the Eligible Facility Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial or failure, in writing, within ten (10) calendar days of the City's action.

#### **9.03.20 Extent and Parameters of Eligible Facility Permit and Conditional Use Permit for Wireless Telecommunications Facilities.**

The extent and parameters of an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

A) Such Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall not be assigned, transferred or conveyed without the express prior written notification to the City.

B) Such Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Eligible Facility or Conditional Use Permit, or for a material violation of Article 9.03, Part A, after prior written notice to the holder of the Conditional Use Permit.

#### **9.03.21 Application Fee**

At the time that a Person submits an Application for an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities for a new Tower, such Person shall pay a non-refundable application fee therefor to the City in an amount as set by resolution by the Fairbury City Council. If the Application is for an Eligible Facility Permit or Conditional Use Permit which involves modifying or co-locating on an existing Tower or other suitable structure, where no increase in height of the Tower or structure is required, or for a temporary facility the non-refundable fee shall be in an amount as therefor set by resolution by the Fairbury City Council.

#### **9.03.22 Small Cell / DAS Facilities**

Small Cell Facilities have the potential to require either an Eligible Facilities Permit or a Conditional Use Permit depending on the proposed facility. The information required for an Eligible Facility or a Conditional Use Permit is required as outlined in Article 9.03, Part A. Batch applications can be submitted to expedite the permitting process. Applicant will be required to maintain the Minimum Account Balances. The total amount of the funds needed may vary with the scope and complexity of the project. The Cap established in Section 9.03.16(c) does not apply for batch applications.

#### **9.03.23 Performance Security**

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least \$75,000 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of Article 9.03, Part A, and conditions of any Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities issued pursuant to Article 9.03, Part A. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit for Wireless Telecommunications Facilities and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Eligible Facility Permit or Conditional Use Permit, for Wireless Telecommunications Facilities.

#### **9.03.24 Reservation of Authority to Inspect Wireless Telecommunications Facilities**

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

#### **9.03.25 Liability Insurance**

A) A holder of an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and

property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit for Wireless Telecommunications Facilities in amounts as set forth below:

- 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- 2) Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
- 3) Workers Compensation and Disability: Statutory amounts.

B) For a Wireless Telecommunications Facility on City property, the Commercial General Liability insurance policy shall specifically include the City and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.

C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

E) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the granting of the Conditional Use Permit, the holder of the Eligible Facility Permit or Conditional Use Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

#### **9.03.26 Indemnification**

A) Any application for Wireless Telecommunication Facilities that is proposed for City property, pursuant to Article 9.03, Part A, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

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

#### **9.03.27 Fines**

A) In the event of a violation of Article 9.03, Part A, or any Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities issued pursuant to Article 9.03, Part A, the City may impose and collect, and the holder of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall pay to the City, fines or penalties as set forth below.

B) The holder of an Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities failure to comply with provisions of Article 9.03, Part A, shall constitute a violation of Article 9.03, Part A, and shall subject the Applicant to the code enforcement provisions and procedures as provided in Article 12, Section 12.08 of the Zoning Ordinance of the City of Fairbury and Article 86 of Nebraska Revised Statutes.

C) Notwithstanding anything in Article 9.03, Part A, the holder of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated

damages or other penalties, to evade or avoid compliance with Article 9.03, Part A, or any section of Article 9.03, Part A. An attempt to do so shall subject the holder of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities to termination and revocation of the Eligible Facility Permit or Conditional Use Permit for Wireless Telecommunications Facilities. The City may also seek injunctive relief to prevent the continued violation of Article 9.03, Part A, without limiting other remedies available to the City.

#### **9.03.28 Default and/or Revocation**

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of Article 9.03, Part A, or of the Eligible Facility Permit or Conditional Use Permit for Wireless Communications Facilities, then the City shall notify the holder of the Eligible Facility Permit or Conditional Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as set forth in Section 9.03.27 and if a violation is not corrected to the satisfaction of the City in a reasonable period of time said Eligible Facility Permit or Conditional Use Permit is subject to revocation.

#### **9.03.29 Removal of Wireless Telecommunications Facilities**

A) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of Wireless Telecommunications Facilities.

- 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding 12 consecutive months, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
- 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
- 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, or any other necessary authorization and the Eligible Facility or Conditional Permit for Wireless Telecommunications Facilities may be revoked.

B) If the City makes such a determination as noted in subsection (A) of this section, then the City shall notify the holder of the Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.

C) The holder of the Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the City.

D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit for Wireless Communications Facilities holder has received notice, then the City may order officials or representatives of the City to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities holder.

E) If the City removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the City may take steps to declare the Wireless Telecommunications Facilities abandoned and sell them and their components.

F) Notwithstanding anything in this Section to the contrary, the City may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more than ninety (90) days, during

which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, subject to approval of the City, and an agreement to such plan shall be executed by the holder of the Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

#### **9.03.30 Relief**

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of Article 9.03, Part A, may request such, provided that the relief or exemption is contained in the submitted Application for either a Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities, or in the case of an existing or previously granted Eligible Facility or Conditional Use Permit for Wireless Telecommunications Facilities a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption, it will have no significant effect on the health, safety and welfare of the City, its residents and other service providers.

#### **9.03.31 Periodic Regulatory Review by the City**

- A) The City may at any time conduct a review and examination of Article 9.03, Part A.
- B) If after such a periodic review and examination of this Ordinance, the City determines that one or more provisions of Article 9.03, Part A, should be amended, repealed, revised, clarified, or deleted, then the City may take whatever measures are necessary in accordance with applicable Law in ARTICLE 9.03: WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE number order to accomplish the same. It is noted that where warranted, and in the best interests of the City, the City may repeal Article 9.03, Part A, at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the City may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Article 9.03, Part A.

#### **9.03.32 Adherence to State and/or Federal Rules and Regulations**

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

#### **9.03.33 Adherence to International Building Code**

To the extent applicable, the holder of an Eligible Facility Permit or a Conditional Use Permit for Wireless Communication Facilities shall adhere to the latest version of the International Building Code adopted by the City of Fairbury.

9.03.34 to 9.03.39 Reserved for Future Use.

**ARTICLE 9.03, PART B, SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY****9.03.40 Title**

Article 9.03, Part B, shall be known and cited as "Small Wireless Facilities in the Right-of-Way" for the City of Fairbury, Nebraska, and herein referred to as Article 9.03, Part B.

**9.03.42 Definitions**

For purposes of Part B of this Article, the definitions of this Section are as defined in Nebraska Revised Statutes Chapter 86 for small wireless facilities in the public right of way, any definitions not defined in the Statute shall be as defined in Part A.

**9.03.43 Purpose and Scope**

This Article supplements the generally applicable right-of-way permitting provisions in §93.003 of the City of Fairbury Municipal Code with specific provisions for the placement, permitting, and use of small wireless facilities in the City's right-of-way. In the event of a conflict between §93.003 of the City of Fairbury Municipal Code and this Article, this Article shall control. This Article is intended to comply with the Small Wireless Facilities Deployment Act as adopted by the 106th Nebraska Legislature First Session, referred to in this Article as the "Act". Nothing in this Chapter shall restrict any authority of the City as provided in the Act.

**A. Applicability of this Article.** No person shall site, place, construct, operate, maintain, repair, remove, modify, or prepare any small wireless facility, any wireless support structure, any utility pole built or modified solely to accommodate a small wireless facility, or any other structure built solely to support a wireless facility, in the City's right-of-way, without first having received a permit from the City to occupy right-of-way pursuant to §93.003 of the City of Fairbury Municipal Code. Any small wireless facility, wireless support structure, or any utility pole or other structure built or modified solely to support a wireless facility, which is located outside the City's right-of-way, is not subject to this Article; however, such facilities and structures are subject to the City's Zoning Ordinance.

**B. Exceptions and Limitations.**

1. Notwithstanding subsection (A) above, the City shall not require an application, permit, or other approval or charge fees or rates for (a) routine maintenance of small wireless facilities; (b) replacement of small wireless facilities with small wireless facilities that are substantially similar in weight or windage or the same size or smaller; or (c) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles in compliance with the National Electrical Safety Code; provided, in all such cases, the City may require a permit to occupy the right-of-way for work that exceeds the original weight or windage or that requires excavation or closing of sidewalks or vehicular lanes within the right-of-way for such activities.
2. Nothing in this Article shall be construed (a) to allow any entity to provide communications services without complying with all laws applicable to such providers or (b) to authorize collocation, installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility or a utility pole, in a right-of-way.
3. Except as provided in Article 9.03, Part B, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate, and replace utility poles along, across, upon, and under the right-of-way so long as such facilities and poles do not obstruct or hinder the usual travel or public safety on such right-of-way or obstruct the legal use of such right-of-way by utilities or the safe operation of their systems or provision of service.
4. Section 9.03, Part B, Sections 9.03.44 to 9.03.47 shall not apply to public power suppliers or to the collocation of small wireless facilities on utility poles owned, operated, or managed by a public power supplier.

**9.03.44 Permits to Occupy the Right-of-Way****A. Application for Permits.**

1. Applications for permits to occupy the right-of-way are available from the Community Development Director. Completed applications shall be submitted to the City's Community Development Department. In addition to the information required by §93.003 of the City of Fairbury Municipal Code applicants shall submit the following information with each completed application:

- (a) an attestation that the small wireless facilities covered by the application will be operational for use by a wireless services provider within nine 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; and
- (b) an attestation that each proposed small wireless facility satisfies each of the aesthetic and design standards set forth by the City except for such standards, if any, for which applicant is concurrently submitting a request for relief; and
- (c) for any small wireless facilities collocated on utility poles or wireless support structures owned, operated, or managed by a person other than the City or a public power supplier, a copy of the authorization of such person consenting the application; and
- (d) if the collocation of the small wireless facility is on utility poles owned, operated, or managed by a public power supplier pursuant to a negotiated pole attachment agreement as provided in Neb. Rev. Stat. §86-1244(1), then a copy of said agreement; and
- (e) all permit fees required under §93.003 of the City of Fairbury Municipal Code; and
- (f) information directly related to the impairment of wireless service in the immediate area; and
- (g) construction and engineering drawings and information demonstrating compliance with the criteria set forth in Section 9.03.44 (C)(1); and

2. An applicant that collocates a small wireless facility within the City right-of-way or on a utility pole assumes the risk of any loss, damage to, or loss of use of any facilities which are damaged, destroyed, or taken out of service due to applicant's use or presence in or on the right-of-way, except to the extent such loss or damage is due to or caused by the negligence or willful misconduct of the City.

3. An applicant may file a consolidated application for up to five individual small wireless facilities instead of filing a separate application for each such facility. An applicant shall submit the information required under §93.003 of the City of Fairbury Municipal Code for each small wireless facility covered by a consolidated application; otherwise, the applicant may submit a single set of documents that apply to all of the small wireless facilities covered by such a consolidated application. Each small wireless facility within a consolidated application shall be subject to individual review; provided, that a decision regarding all small wireless facilities shall be rendered in a single determination by the Community Development Director, or his/her designee and provided further that the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same application or be a basis upon which to deny the consolidated application as a whole.

#### B. Review of Permits.

1. Within 20 days after receiving an application, the Community Development Director shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the City will specifically identify the missing information in writing. The 90-day processing deadline set forth in subsection (B)(2) below shall restart upon the first finding of incompleteness. The applicant may resubmit the completed application within 30 days without additional charge. Subsequent findings of incompleteness shall toll the 90-day processing deadline, and any subsequent review shall be limited to the specifically identified information subsequently completed. If the applicant makes any material changes in a resubmission, other than the material changes required by the City, the applicant shall be required to make a new application and submit a new application fee. Subsequent findings of incompleteness will toll the deadline from the time the City sends notice of the incompleteness to the time the applicant provides the missing information. The application processing deadline also may be tolled (a) if requested by applicant in order to accommodate applicant's request for relief submitted by applicant pursuant to Section 9.03.48 or (b) by agreement between the City and the applicant.

2. Unless tolled, the City will process an application no later than 90 days after receiving it. Subject to the tolling under subsection (B)(1) above, the application shall be deemed approved if the City fails to approve or deny the application within 90 days after receipt of the same. The City may extend the 90-day application processing deadline for a period of 10 business days if the City notifies the applicant in advance before the

day on which approval or denial is originally due. Upon mutual agreement between the applicant and the City, the City may extend the period for consideration of an application for 30 days.

3. The City may propose technically feasible alternative utility pole locations; provided, the City shall not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole. The wireless provider shall cooperate with the City to address the City's reasonable proposal.

4. The term of each permit to occupy the right-of-way issued under this Article shall be set forth in the permit and shall be for a period not less than five years.

**C. Denial of Permit Applications.**

1. The City may deny an application for a proposed collocation of a small wireless facility or installation, modification or replacement of a utility pole that meets the requirements of this Article 9.03, Part B, if the proposed operation: (a) materially and demonstrably interferes with the safe operation of traffic control equipment or the right-of-way; (b) materially interferes with sight lines or clear zones for air or land transportation or pedestrians; (c) materially interferes with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement; (d) fails to comply with the spacing requirements (e) fails to comply with applicable codes of general applicability which do not apply exclusively to wireless facilities; (f) fails to comply with the aesthetic and other design requirements set forth by the City and Section 9.03.46; or (g) designates the location of a new utility pole within seven feet in any direction of an electrical conductor unless the wireless provider obtains the written consent of the public power supplier that owns or manages the electrical conductor.

2. The City shall document the basis for denial, including any specific provisions of this Article or other applicable law on which the denial was based, and send such documentation to the applicant on or before the date the City denies the application. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days without paying an additional application fee, and the City shall have 30 days after receiving such resubmitted application to approve or deny the same; provided, such review shall be limited to deficiencies cited in the City's denial.

**D. Issuance of Permits.**

All permits to occupy the right-of-way issued under this Article are issued subject to the conditions set forth in §93.003 of the City of Fairbury Municipal Code and, in addition thereto, the following conditions:

1. The small wireless facilities covered by the application shall be operational for use by a wireless services provider no later than one year after the later of the completion of all make-ready work or the permit issuance date; provided, upon applicant's request, the City (a) shall grant a one-time extension for up to nine months if the applicant demonstrates that the delay is caused by the lack of commercial power to communications transport facilities to the site and (b) may grant one or more additional extensions on such terms as mutually agreed upon by the City and applicant.

2. The City may reserve space on new poles and the applicant shall cooperate with the City in any such reservation, except that the City shall first notify the applicant in writing that it is interested in reserving such pole space or sharing the trenches or bores in the area where the collocation is to occur. The applicant shall allow the City to place its infrastructure in the applicant's trenches or bores or on the utility pole as requested by the City, except that the City shall incur the incremental costs of placing the conduit or infrastructure as requested. The City shall be responsible for maintaining its facilities in the trenches and bores and on the City's pole.

**E. Renewal of Permits.**

The City shall renew a permit issued hereunder for an equivalent duration as long as the applicant is in compliance with the criteria set forth in Article 9.03, Part B, Section 9.03.44(C)(1) as such criteria existed at the time the permit was granted.

**9.03.45 Rates**

**A. Applicability of Section.** The fees and taxes set forth in this Section shall apply to permits issued hereunder in lieu of the fees and taxes set forth in §93.003 of the City of Fairbury Municipal Code.

**B. Application Fees.** For each collocation of a small wireless facility on an existing or replacement utility pole, the applicant shall pay the City the small wireless facility collocation application fee in the amount set forth in the Schedule of Fees. For each installation, modification, or replacement of a utility pole and the collocation of an associate small wireless facility on such pole, the applicant shall pay the City the small wireless facility site application fee in the amount set forth in the Schedule of Fees.

**C. Occupation Tax.** If applicable to applicant, the applicant shall pay the City an annual occupation tax for use of the right-of-way in the amount and manner provided in Chapter 110 of the Fairbury City Code. If applicant is not required to pay an occupation tax under said Chapter, applicant shall pay the City the rate of \$250 per small wireless facility per year.

**D. City Pole Rate.** For each utility pole on which the applicant collocates a small wireless facility, the applicant shall pay annually the City pole rate in the amount set forth in the City's Schedule of Fees.

**E. Make Ready Work Fees.**

#### **9.03.46 Aesthetic and Design Standards**

The purpose of the standards set forth in this Section is to supplement the aesthetic and design standards set forth by the City. All small wireless facilities in the right-of-way to which Article 9.03, Part B applies, shall comply with each standard set forth by the City and those set forth in this Section 9.03.46.

**A. Spacing of Ground Mounted Equipment and New Utility Poles.** All proposed ground mounted facilities and new utility poles shall be located pursuant to the spacing requirements for any other small wireless facility, provided, however, that such spacing requirements shall not prevent a wireless provider from serving any location.

**B. Additional Design Rules for Pole-Mounted Facilities.** All small wireless facilities proposed to be mounted on utility poles shall conform to the following guidelines:

**1.** To the maximum extent technically feasible, and provided the limits of a small wireless facility are not exceeded, all antennae and all of each antenna's exposed elements and shroud transitions shall be mounted at the top of the proposed pole and shall be enclosed within a single cylindrical antenna shroud which (a) reasonably color-matches the pole; (b) should have a diameter no greater than 14 inches; (c) should have a uniform diameter once transitioned from the pole shaft; (d) should include only visually concealed cables, wires, and other components; and (e) should be no greater than 6 feet in height;

**2.** All components of the facility, other than those described in subsection (B)(1) above, shall be placed below grade to the maximum extent technically feasible and, when undergrounding is not technically feasible, shall be fully enclosed with a base shroud that: (a) is structurally sound to fully support the pole while maximizing equipment volume; (b) is cylindrical and is as small as technically feasible with a maximum consistent diameter of 30 inches; (c) does not exceed a height of six feet from mounting surface; (d) reasonably matches pole color and finish; and (e) is as solid as feasible to visually conceal and lock all contents and wiring; and

**3.** Subject to the placement and other requirements in subsections (B)(1) and (B)(2) above, any components of a freestanding facility that are attached to support poles must be mounted so that all parts are at least seven feet or higher above adjacent surface grade.

**C. Height Restrictions.**

**1.** Any new or modified utility pole installed in a right-of-way shall not exceed the greater of (a) 5 feet in height above the tallest existing utility pole located within 500 feet of the new utility pole in the same right-of-way or (b) 50 feet above ground level.

2. New small wireless facilities in a right-of-way shall not extend more than the greater of (a) 50 feet in height, including antennae, or (b) more than 5 feet above an existing utility pole in place as of September 1, 2019 and located within 500 feet in the same right-of-way.

3. The City shall have the right, at its sole discretion, to consider and approve an application to install a utility pole or wireless support structure that exceeds the height limits in this subsection (C); provided, any facility which exceeds the height restrictions set forth in the definition of "small wireless facility" provided in Section 9.03.42 shall also be subject to the City's Zoning Ordinance.

**D. Decorative Poles (Streetlights).**

If decorative poles serving as streetlights have been installed in a neighborhood, small wireless facilities shall first be collocated on such poles at intersections as combination poles with streetlights, with poles mid-block as secondary sites so that removal of decorative streetlights mid-block is minimized and preservation of the intended decorative aesthetics is maximized. The City may, in its discretion authorize the replacement of a decorative pole but any replacement pole shall strictly conform to the design aesthetics of the decorative pole being replaced.

**9.03.47 Independent Technical and Legal Review**

In the event applicant is requesting make ready work on utility poles, the City may request a deposit for such make ready work based on a good faith estimate.

**9.03.48 Relief**

Any applicant desiring to appeal from any aspect or requirement of this Article, may file an appeal with the Board of Adjustment pursuant to Section 10.02 of Article 10 of the City of Fairbury Zoning Ordinance. Section 10.02 to 10.04 shall govern such appeals.

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**Section 9.04 Fences**

9.04.01 No fence shall be constructed within the zoning jurisdiction of the City of Fairbury unless a permit therefore is approved and issued by the building inspector or zoning administrator and is constructed in conformance with the following requirements:

1. Unless otherwise provided by this title or other sections of the Fairbury Municipal Code, no fence shall be built on any lot or tract outside the surveyed lot lines, or adjacent to any municipal property, excluding public streets and parks.
2. Unless otherwise provided by this title or other sections of the Fairbury Municipal Code, any fence built on residential property within required front yards shall contain openings constituting no less than 50 percent of the surface area of the fence.
3. No solid fence permitted or required by this title or other sections of the Fairbury Municipal Code shall be built within the sight triangle; or otherwise in any manner that creates a traffic hazard or obstruction to visibility.
4. The finished surfaces of any fence shall face toward adjacent properties and street frontage.
5. Fences constructed within residential districts or on land used for residential purposes are subject to the following provisions.
  - a. The maximum height of a fence within a required front yard shall be 42 inches not exceeding 50 percent closed construction, or 48 inches not exceeding 25 percent closed construction.
  - b. The maximum height for any fence outside of a required front yard shall be seven feet.
  - c. Fences built on residential property outside of the required front yard and outside of the site triangle may exceed 50 percent closed construction.
  - d. Fences shall be constructed of wood, chain-link, PVC/resin, wrought iron, stone or masonry materials and any other materials approved by the City of Fairbury Zoning Administrator or his/her designee.
  - e. Materials not allowed in (d) above may be allowed by conditional use permit only and can include: scrap lumber, scrap metal, pallets, snow fences, chicken wire and wire.
6. Where it is demonstrated that for security purposes the perimeter fencing around a plant or building located in an area zoned as an Industrial District must be higher than seven feet in height may be approved through a Conditional Use Permit.