

ORDINANCE NO. 3572

AN ORDINANCE AMENDING THE BROKEN ARROW CODE OF ORDINANCES, APPENDIX A – ZONING ORDINANCE, CHAPTER 5, DEVELOPMENT STANDARDS, SECTION 5.9, TELECOMMUNICATION FACILITIES; REPEALING ALL ORDINANCES TO THE CONTRARY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW:

SECTION I. That Appendix A- Zoning Ordinance, Chapter 5-Development Standards, Section 5.9- Telecommunication facilities shall be amended as follows:

5.9 - Telecommunication facilities.

A. *Purpose.* The city council finds that telecommunication towers, antennas and other wireless facilities, including supporting structures, present land use concerns that should be dealt with by protecting residential uses, encouraging co-location, minimizing the number of wireless facilities in a manner that does not discourage market access or competition, and preventing or limiting adverse effects on off-site premises. The intent of these provisions is to provide for the continued establishment of new wireless communication providers and the expansion of existing wireless communication services within the city, while simultaneously protecting neighborhoods, all through minimizing adverse visual and operational effects of facilities through careful design, sighting, screening, camouflage, and co-location requirements encouraging creative design and camouflage measures.

B. *Definitions.*

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

Applicable codes means uniform building, fire, electrical, plumbing, or mechanical codes adopted by the city, a recognized national code organization, or local amendments to those codes, as well as this Code and all other codes and regulations of the city.

Applicant means any wireless provider who submits an application.

Application means a request submitted by an applicant (i) for a permit to construct a telecommunication tower or antenna; (ii) for a permit to co-locate an antenna or a small wireless facility; or (iii) to approve the installation or modification of a telecommunication tower, antenna, utility pole or wireless support structure.

City owned pole means (i) a utility pole owned or operated by the city in the right-of-way or easement, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the city that supports only wireless facilities, but does not include a telecommunication tower.

Co-locate means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

Day means calendar day.

Fee means a one-time charge

Rate means a recurring charge

Small wireless facility and *small cell facility*, mean a wireless facility that meets both of the following criteria: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, and all of its exposed elements could fit within an enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. Ancillary equipment such as: electric meters, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services are not included in the equipment volume calculation.

Telecommunication tower means a freestanding structure, either guyed or self-supporting, designed to support or capable of supporting wireless facilities. Such term shall not include a utility pole.

Utility pole means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including a city owned pole. Such term shall not include structures supporting only wireless facilities.

Wireless facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.

Wireless infrastructure provider means any person or entity, including a person or entity authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

Wireless services means any services, whether at a fixed location or mobile, provided using wireless facilities.

Wireless services provider means a provider of wireless services.

Wireless support structure means a freestanding structure, such as a monopole; telecommunication tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless facilities. Such term shall not include a utility pole.

C. *Telecommunication towers.*

1. *Telecommunication towers 50 feet or greater are prohibited without a permit.* No person or entity shall hereafter construct, own, or operate any telecommunication tower in excess of 50 feet in height above the mean elevation of the ground on which it is built, unless said person has obtained a building permit from the city.

2. *Telecommunication towers on government land.* Telecommunication towers located on property owned, leased, or otherwise controlled by the governing authority of any city, county, public school district, state, or by any agency of the United States of America, will be exempt from the remaining requirements of this section C if in compliance with the remaining provisions of this Code and are no more than 120 feet in height; provided that such exemption will only be available if a commercial lease or license authorizing such telecommunication tower has been approved by the applicable governing body. The telecommunication tower owner shall file a permit application with the city for purposes of keeping a complete record of telecommunication towers within the city and the permit shall be issued administratively. The city council expressly finds that governmental controls through proprietary devices such as a commercial lease are an adequate substitute for governmental control through regulatory devices.
3. *Telecommunication towers of limited height on residential land.*
 - a. No telecommunication tower shall be constructed in excess of 50 feet in height above mean ground elevation on any property actually used for a single-family residential purpose, or any vacant land that is intended for residential use in the comprehensive plan (level 1 and level 2), or that actually has any "R" district classification and use.
 - b. Any telecommunication tower constructed as an accessory use on residentially zoned land that is developed and utilized for institutional purposes shall not be constructed in the front yard or within the minimum side yard requirements for the applicable zoning district. However, a camouflaged telecommunication tower that does not exceed 100 feet may be placed in the front yard if concealment of both the telecommunication tower and the equipment structures are accomplished (e.g., a telecommunication tower disguised as steeple or comparable building element at a site for a place of worship, or a flagpole design at a public school, or an obelisk at other institutions).
4. *Application requirements.*
 - a. Each applicant for a permit to build a telecommunication tower shall provide to the department of community development an inventory of all the existing and approved telecommunication towers or permits for other locations that are within one-half mile of the site applied for. The inventory shall include specific information about the location, height, and design of each telecommunication tower.
 - b. If the telecommunication towers within the applicant's inventory have been designed for co-location, a description of the facilities and heights for the possibility of co-location shall be included within the inventory. Copies of the standard co-location lease shall also be provided, with appropriate blanks for physical dimensions and price, but including all standard terms and conditions. Said inventories and form contracts may be shared with other applicants applying for any approvals under this section; provided that the city does not warrant the accuracy of any such information shared with other applicants.
 - c. The applicant for a permit shall also provide the description, identity, and contact for the backhaul network provider who will serve that site.

- d. Applicants for permits involving co-location shall specify in the application the features of the telecommunication tower that adapt it for co-location, such as the number and location of portholes for cables, the proposed ground footprint of multiple equipment sheds and cabinets, and related items.
- e. The application shall also include elevations of all proposed shielding, screening, and the details of materials and color for the facility.
- f. A nonrefundable fee as set forth in the manual of fees shall accompany each application.

5. *Construction standards.*

- a. The telecommunication tower shall either maintain a galvanized steel finish, or be painted a uniform neutral color (unless color is governed by applicable standards of the Federal Aviation Administration), so as to reduce visual intrusiveness. Cabling shall be contained interior to the structure of the telecommunication tower, or wrapped in a cover with a matching color scheme to the telecommunication tower. The use of camouflage technology so that the telecommunication tower appears to be a part of the primary building on site is also acceptable. The design and maintenance of the equipment, buildings, cabinets, or related structures shall use materials, colors, textures, screening, and landscaping that will blend the telecommunication tower facilities to the natural setting or the built environment of the primary use.
- b. Telecommunication towers shall not be artificially lighted, unless such lighting is required by the Federal Aviation Administration or other applicable authority.
- c. All telecommunication towers and related equipment shall meet or exceed current standards and regulations of the Federal Aviation Administration and the Federal Communications Commission, together with the regulations of any other agency of the federal government with the authority to regulate telecommunication towers and antennas.
- d. Antennas and associated supports, cables, brackets, and related equipment shall not be mounted on any telecommunication tower or other supporting structure by any method of punching, drilling, or other means that may weaken the telecommunication tower or supporting structure.
- e. All telecommunication tower sites shall be served by a driveway from a public street and said driveway shall be paved with an all-weather surface. However, sites in areas of restricted street access may be served by driveways from paved public or private parking lots. The engineering and construction department must approve the size of "tin horns" or other drainage structures prior to the start of construction.
- f. All telecommunication towers and all antenna support structures that are between 51 feet and 100 feet in height (inclusive) shall be constructed to support a minimum of two antenna arrays with the cabling interior to or otherwise concealed within the structure. All telecommunication towers that are in excess of 100 feet in height shall be constructed to support a minimum of four antenna arrays with the cabling interior to or otherwise concealed within the structure.
- g. Construction must otherwise comply with all applicable codes.

- h. Any information of an engineering nature that the applicant submits to the city, whether civil, electrical, structural or mechanical, shall be certified in writing, by an Oklahoma licensed professional engineer. Such information shall include, but not be limited to, anticipated telecommunication tower height, telecommunication tower type, construction materials, declared wind speed in mph, ice load in inches, anticipated antennas loading for the design, and engineered appurtenance loading.
6. *Maintenance, operation, and removal.* The owner of the telecommunication tower shall ensure that it is maintained in compliance with applicable codes and the applicable standards for telecommunication towers established by the electronic industries association, as amended from time to time, in order to ensure the structural integrity of the telecommunication tower. The failure to maintain structural integrity through compliance with these standards is hereby declared a public nuisance and the telecommunication tower may be abated, including the removal of the telecommunication tower under authority of and in compliance with the city council's powers to declare and abate public nuisances. No antenna may be used which, by design or by actual operation, causes interference on any frequency actually used by any police, fire, or public ambulance service having authority or jurisdiction over any portion of the city.
7. *Site plan.* Each applicant requesting a permit under this section shall submit a scaled site plan, lighting plan, and scaled elevation view together with other supporting drawings, calculations, and documentation, all signed and sealed by appropriate licensed engineers or other appropriate professionals, showing the location and dimensions of all improvements proposed for the site. This information shall include existing and proposed topographical and planimetric drawings and all significant features that support co-location (e.g. provisions for interior cabling, portholes, the footprint for multiple equipment sheds and cabinets, etc.).
8. *CG, CH, and industrial districts.* Telecommunication towers are lawful uses permitted administratively when located as accessory uses on any land in industrial zoning districts, or any developed land in CG zoning districts or CH zoning districts that are equal to or larger than two and one-half acres.
9. *Setbacks.* Such telecommunication towers shall be set back from any existing adjacent residential lot boundary equal to 200 percent of the total height of the telecommunication tower or other supporting structure, shall not exceed 200 feet in height as to industrial property or 120 feet in commercial property, and shall comply with the terms of this section and any future amendment thereto. Such telecommunication towers on commercial property must also use camouflage technology such as flagpoles, obelisks or other approved "stealth" coverings. Such telecommunication towers on industrial property must meet the front and side yard setback requirements for the subdivisions.
10. *Other industrial land.* The city manager or his designee may approve telecommunication tower construction if the new telecommunication tower to be constructed is within an industrially zoned area, the industrial district is at least ten acres in size, the telecommunication tower location is no closer than 350 feet to a residential structure, and the telecommunication tower is no greater than 100 feet in height.

11. *Council permits for telecommunication towers.* If the telecommunication tower may not be permitted administratively as described above, then no telecommunication tower may be constructed without securing a permit from the city council in accordance with the following:
 - a. Applications for a telecommunication tower permit from the city council shall first obtain a specific use permit from the planning commission in accordance with applicable codes.
 - b. The city council may impose conditions that it, in good faith, believes are reasonably necessary to minimize any adverse effect of the proposed telecommunication tower on adjoining properties, and that foster competition by encouraging multiple uses on co-location structures.
 - c. The city council may require particular evidence or special conditions in the event that it determines the proposal may potentially contaminate water supplies, contaminate surface waters or soil, interfere with drainage, or interfere with the primary use of the public property.
 - d. All sized freestanding telecommunication towers are prohibited in A-1 and RE zoning districts, including areas that are in fact used as agricultural or residential estate areas even though zoned at more intense levels. Telecommunication towers in excess of 100 feet are prohibited in R1, RS-1, R2, RS-2, R3, RS-3, and RS-4 zoning districts. Applicants in such areas shall be required to establish the necessity of the telecommunication tower and all elements of the application by clear and convincing evidence.
 - e. When an applicant for a telecommunication tower permit works with a developer of residential land, and designs a subdivision that uses a flagpole and guard house (or comparable camouflage) as elements within the design of the subdivision entrance or private park reserve, the approval of the final plat shall include the permit for the telecommunication tower at a height not to exceed 80 feet and used as the flagpole, and an equipment cabinet within the guardhouse.
12. *Factors considered for city council approval.* The city council shall consider the following factors in determining whether or not to issue a permit for a telecommunication tower, although council may modify one or more of these criteria if, in the particular circumstances of the application, council concludes that the goals and intent of this section are better served by such modification. Factors to be considered are:
 - a. Height of the proposed telecommunication tower;
 - b. Proximity of the telecommunication tower to residential structures and adjacent residential lot boundaries;
 - c. Nature of uses on adjacent and nearby properties;
 - d. Surrounding topography;
 - e. Surrounding tree coverage and foliage;

- f. Design of the tower, with particular reference to those design characteristics, which have the effect of reducing or eliminating visual obtrusiveness, or providing camouflage;
 - g. Proposed routes of ingress and egress;
 - h. Whether or not the telecommunication tower is constructed so as to be available for co-location in the future; and
 - i. Whether or not there are suitable, existing telecommunication towers or other supporting structures capable of meeting the technological needs of the applicant.
- 13. *Evidence of capacity.* All evidence relating in any manner that in essence indicates that the application location is needed to improve the capacity of the system and is to address a specific and local geographic problem must be submitted in writing, and signed and sealed by a professional engineer licensed in the state.
- 14. *Warning sirens.* All applications for new telecommunication towers shall include an examination of the city's emergency warning siren location map. If the new telecommunication tower site is in a location where the emergency warning siren location map indicates that a siren is proposed, then the permit may be conditioned on the granting of permission for the city to place and operate a storm siren warning system on the completed telecommunication tower, at a height to be mutually agreed, but typically between 20 feet and 30 feet above the mean lot elevation, unless such location would create a technical problem for the applicant's system. Costs of the installation and operation of the warning siren shall be solely the responsibility of the city. Applicant shall advise at the time of the application what costs, rental, or other fees will be required for the placement of the warning siren.
- 15. *Radius report.* If the application is for a telecommunication tower in excess of 200 feet in industrial areas or if in excess of 120 feet in any other zoning district, and council action is required, then the applicant must provide a list of property owners within a 300-foot radius of the perimeter of the lot on which the telecommunication tower is proposed, and the city shall notify the persons on the list by mailing notice of the hearing, all at applicant's expense.
- 16. *Co-location contracts.* Any applicant who claims that a proposed telecommunication tower will be used for co-location shall provide a form contract, which will be used for co-location for at least five years after construction. The contract shall only have blanks for the name of the lessee, date, location and size of the equipment shed, height of the antenna array and final price.
- 17. *Effect of existing telecommunication tower availability.* No new telecommunication tower should be permitted by the council unless the applicant demonstrates to the city council's reasonable satisfaction that no existing telecommunication tower or other structure can accommodate the applicant's proposed antenna. Evidence of this unavailability may consist of any of the following:
 - a. No existing telecommunication towers or structures are located within the geographic area required to meet applicant's engineering, capacity, or technical requirements;

- b. Existing telecommunication towers or structures are not of sufficient height or structural strength to meet the applicant's engineering, capacity, or technical requirements;
 - c. Applicant's proposed telecommunication tower antennas would cause electromagnetic interference with existing antennas on existing telecommunication towers or structures, or the existing antennas on the existing telecommunication towers or structures would cause electromagnetic interference with applicant's proposed telecommunication tower antennas;
 - d. The fees, costs, or contractual provisions required by the owner of the existing telecommunication tower in order to share said telecommunication tower structure are unreasonable. (In this regard, eight-year rental costs exceeding the costs of site acquisition and telecommunication tower construction including engineering and design fees, are presumptively unreasonable); and
 - e. The applicant demonstrates that there are other limiting factors that render existing telecommunication towers and structures unsuitable.
18. *Setbacks and security.* All telecommunication towers must be set back a minimum distance of 120 percent of the total height of the tower and structure from any adjacent residential lot boundaries unless a greater setback is required by other provisions of this section. The location of telecommunication towers, guy wires, and accessory facilities shall meet the minimum zoning district setback requirements and shall not be in the front yard of the principal use. Towers shall be enclosed by security fencing not less than eight feet in height together with such appropriate anti-climbing devices as may be best utilized by the type of telecommunication tower involved; provided the council may waive security fencing requirement if other features of the site provide adequate substitute security. Camouflage technology may be used to justify a reduction or elimination of front yard setbacks as to the telecommunication tower.
19. *Screening and landscaping.*
- a. Telecommunication tower facilities shall be visually buffered by a hedge of low-maintenance evergreen plant materials and approved opaque screening materials, which effectively screen the view of the telecommunication tower compound and accessory facilities.
 - b. Existing trees and natural landscape and elevations around the site shall be preserved to the maximum extent possible. Shrub planting materials that are used for screening must be a minimum five-gallon evergreen; the evergreens must be capable of reaching the full height of the fencing materials at full growth. Trees shall be at least two inches in caliper. Plant materials that die or do not effectively buffer the fencing materials shall be replaced. The landscaping plans shall include provisions for irrigation of all new materials proposed to be planted, or the landscape maintenance shall be bonded by insurance or other surety company licensed to do business in Oklahoma; provided that a single bond in an adequate amount may be used for multiple sites.
 - c. The privacy fencing or similar approved opaque screening materials shall be a minimum of eight feet in height; a greater height of fencing shall be used as necessary to screen taller equipment sheds within the compound. Provided that

equipment sheds which are adjacent to and camouflaged to resemble a structural element of the primary building on site do not have to be fenced.

- d. A landscaping plan shall be included with the application and shall include operational information on how the planting materials will be maintained, irrigated, and fertilized.
 - e. Where a new application is made for an existing site at which the landscaping and screening has not been maintained, the issuance of the permit may be conditioned on the completion of the needed corrective action.
20. *Billboards and signs.* No billboards or signs may be added to telecommunication towers.
21. *Five-year permits, notice of use; removal of abandoned telecommunication towers.* Any telecommunication tower that is not actually used as an antenna support for a continuous period of 12 months shall be considered abandoned, and the permit owner(s) for such antenna(s) or telecommunication tower shall remove same at their expense within 90 days of receipt of notice from the city notifying the permit owner of said abandonment. In the event that such a telecommunication tower is not removed, notice of the intent by the city to remove shall be given to the applicant and to the owner of the real estate on which the telecommunication tower is located if different from the applicant. Abandoned telecommunication towers are hereby declared a public nuisance, removable by the city council in accordance with nuisance abatement procedures or through the claims on a posted bond.
22. *Driveway for telecommunication towers.* Any existing telecommunication tower site that lawfully uses an unpaved driveway to access a public street, and which driveway allows the deposit of dirt, gravel or similar material to be deposited on the public streets during rain conditions, shall be considered a public nuisance, and may be abated in accordance with the general ordinances dealing with nuisance abatement.
23. *Permits limited if not built.* A permit for a telecommunication tower shall be valid for no more than one year, unless a valid building permit is issued and construction proceeds diligently.

D. *Antennas.*

- 1. *Administrative approval of permits.* The city manager or his designee may administratively approve the installing of antennas in accordance with the following:
 - a. Antennas may be installed on an existing structure other than a telecommunication tower (such as commercial or industrial buildings, billboard, sign, power transmission tower, water tower, or other free standing nonresidential structure) that is 60 feet in height or greater, if and only if the additional antennas or supports create a new structure with a cumulative height not to exceed 120 feet from the mean ground elevation.
 - b. Antennas may be installed on an existing structure other than a telecommunication tower (such as a building, sign, utility pole, water tower, or other free standing, nonresidential structure) that is less than 60 feet in height so long as such addition does not add more than 20 feet to the height of the existing structure.

- c. Antennas may be installed on any existing telecommunication tower or utility pole of any height, so long as the addition of said antennas add no more than 20 feet cumulative to the height of the existing telecommunication tower or utility pole. Any associated equipment building must be located in conformity with the generally applicable setback requirements of the zoning district and appropriately screened or landscaped. Said installation adding 20 feet of height may occur no more than one occurrence per telecommunication tower or utility pole. For equipment compounds that are served by a dirt road or drive, the new equipment owner shall pave at least the first 20 feet of the dirt road or drive that is adjacent to the street.
- d. Antennas may be installed on existing structures on agricultural, residential, or office land through an administrative permit under the following conditions:
 - 1. On an existing structure other than a telecommunication tower (such as a building, sign, utility pole, water tower, or other free standing, nonresidential structure that is less than 60 feet in height, so long as such addition does not add more than 20 feet to the height of the existing structure;
 - 2. On an existing telecommunication tower of any height, and further including the placement of additional buildings or other supporting equipment used in connection with said antenna, so long as the addition of said antenna cumulatively adds no more than 20 feet to the height of the existing telecommunication tower and the telecommunication tower remains set back from any existing adjacent residential lot boundary equal to 120 percent of the total new height of the telecommunication tower;
 - 3. On certain developed public properties, including but not limited to water towers, water treatment plants, sewer treatment facilities, police stations, fire stations, ambulance stations, equipment maintenance facilities, and lighted and enclosed sports facilities such as football stadiums, baseball and softball parks, but not practice facilities at unlighted or unsecured locations that may be temporarily used for sporting events, nor in any open parks or greenbelts;
 - 4. On the roofs of public high schools, intermediate high schools, middle schools, elementary schools, and office buildings, so long as such addition does not add more than 30 feet to the height of the existing structure; or
 - 5. On an existing billboard located within the limited access highway corridors so long as the total height does not exceed 120 feet; provided that if the support for the billboard lacks sufficient strength for the new height, then the billboard may be removed and adequate support for both structures may be made, and a billboard of the same or smaller size be reinstalled at the former height. Existing billboards that are outside of the limited access highway corridor may be used, so long as the addition adds no more than 20 feet to the height of the billboard; for purposes of this section, the limited access highway corridors shall be defined as the Broken Arrow Expressway within Tulsa County, the Creek Turnpike, the Muskogee Turnpike and any land within 150 feet on either side, but said definition shall exclude State Highway 51 in Wagoner County and all spurs or older routings.

2. *Temporary antennas.* Temporary antennas shall only be allowed in the following instances:
 - a. In conjunction with a festival, carnival, or other activity requiring a special event permit from the city; and the antennas shall only be allowed commencing from one week prior to the event and be removed one week after the event; or
 - b. In conjunction with a natural calamity such as a storm or other emergency as declared by the city's police or fire departments, which calamity has damaged or destroyed the regular facilities, and the temporary facilities are needed to restore service until the damage can be repaired or replaced. The facility owner or the service provider shall notify the city within 24 hours of the outage, and must receive an administrative permit if the temporary facility will be required for more than seven days. Further, any temporary facilities that remain in place for in excess of six months must receive a permit from the city council for the period in excess of six months.
3. *Screening and landscaping.* Landscaping and fencing requirements on existing telecommunication towers and equipment facilities must be properly maintained prior to the administrative permit being issued by the city manager or his designee director, but new or additional requirements shall not be added for purposes of collocation.

E. *Small wireless facilities.*

1. *Permitted use.* Co-location of a small wireless facility or a new or modified utility pole or wireless support structure for the co-location of a small cell facility shall be a permitted use subject to the following provisions of this section E.
2. *Permit required.* No person or entity shall place a small wireless facility in the right-of-way without first filing a small wireless facility application and obtaining a permit.
3. *Application requirements.* The small wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:
 - a. The applicant's name, address, telephone number, and e-mail address;
 - b. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
 - c. A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;
 - d. A small wireless facility shall comply with all applicable codes.
 - e. Any amendment to information contained in a permit application shall be submitted in writing to the city within 30 days after the change necessitating the amendment.
4. *Routine maintenance and replacement.* An application shall not be required for: (i) routine maintenance; and (ii) the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height.

5. *Placement of small wireless facilities.*
 - a. Small wireless facilities, and new or modified utility poles and wireless support structures for the co-location of small wireless facilities may be placed in the right-of-way as a permitted use subject to the following requirements:
 1. Each new modified utility pole installed in the right-of-way shall not exceed ten feet above the tallest adjacent utility pole in the right-of-way.
 2. Each new modified wireless support structure shall not exceed ten feet above the existing wireless support structure and in no event shall it exceed 50 feet in height.
 3. Each new small wireless facility in the right-of-way shall not exceed ten feet above an adjacent utility pole or wireless support structure in the right-of-way and in no event shall it exceed 50 feet in height.
 - b. Small wireless facilities may be placed on property owned, leased, or otherwise controlled by the city pursuant to a commercial lease approved by the city council.
6. *Small wireless facilities standards.*
 - a. All small wireless facilities affixed to a utility pole which has exterior exposure shall be as close to the color of the utility pole as is commercially available to the wireless provider.
 - b. The design and maintenance of all small wireless facilities, cables, wires, appurtenances, and utility poles, shall include the use of materials, colors, textures, screening and landscaping that will blend the small wireless facilities, appurtenances and utility poles to the natural setting or the built environment of the primary use.
7. *Zoning.* Any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility that exceeds the height or size limits contained in this section E, shall be subject to applicable zoning requirements and applicable codes.
8. *Relocation or modification of small cell facilities.* Within 90 days following written notice from the city, wireless provider shall, at its own expense, protect, support temporarily or permanently disconnect, remove relocate, change or alter the position of any small wireless facilities within the right-of-way whenever the city has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the right-of-way.
9. *Emergency removal or relocation of facilities.* The city retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.
10. *Abandonment of facilities.* Upon abandonment of a small wireless facility within the right-of-way of the city, the wireless provider shall notify the city within 90 days.

Following receipt of such notice the city may direct the wireless provider to remove all or any portion of the small wireless facility if the city, or any of its departments, determines that such removal will be in the best interest of the public health safety and welfare.

- F. *Written decision.* Any decisions to deny an application for the placement, construction, or modification of telecommunication towers for cellular or personal communication service, or specialized radio mobile service shall be conveyed to the applicant in writing, together with the summary of the evidence which supports a denial of the application. A copy of the minutes of the meeting, which contains some of the evidence, may be used in place of or in addition to other summaries. The decision shall further contain the date at which the city council denied the application. The applicant has 30 days after the denial of the application, within which to seek judicial review. Therefore, the city will attempt to give notice in writing within five business days of the denial of the application, unless the applicant or applicant's representative was present in the meeting at which the denial was announced.
- G. *Proprietary powers reserved.* Nothing in this section concerning the regulation of what is legally permissible or legally forbidden interferes with the proprietary right of the city council to control the property held in the city's name or in the name of any of its trusts as either a corporate owner or as public trustee.

SECTION II. Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

PASSED AND APPROVED this 3rd day of June, 2019.

ATTEST:

MAYOR

(Seal) CITY CLERK

APPROVED:

DEPUTY CITY ATTORNEY