

Agenda Item # 23 C
Date 2/21/24





AGENDA

DOUGLAS COUNTY PLANNING COMMISSION

15335 W. Maple Road, Omaha, NE. 68116

Douglas Conference Room, First Floor

February 21, 2024 6:00 p.m.

Commission Members: David Levy –Chair, Tanner Hoffman – Vice Chair, Bill Bowers, Dakotah Smith, Cal Brummund, Callie O’Callaghan, and Scott Bruhn

COMMISSION ACTION:

This meeting is conducted in accordance with the Open Meetings Act of the State of Nebraska, a copy of which is posted in the back of the room.

1. Roll call of members
2. Approval of agenda
3. Approval of September 20, 2023 Planning Commission Meeting Minutes
4. Approval of November 15, 2023 Planning Commission Meeting Minutes

PUBLIC HEARINGS:

1. Text amendments to zoning regulations to allow equipment to be changed on cell towers, without a SUP.

ACTION ITEMS:

1. Text amendments to zoning regulations to allow equipment to be changed on cell towers, without a SUP.

DISCUSSION ITEMS:

REPORTS FROM STAFF:

ITEMS FROM THE PUBLIC:

ITEMS FROM THE MEMBERSHIP:

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Dodge Co Highway Dept

EXECUTIVE SESSION:

ADJOURNMENT:

Article 5 - Supplemental Use Regulations

ARTICLE 5

SUPPLEMENTAL USE REGULATIONS

5.01 Purpose

This Article sets forth additional standards for certain uses located within the various zoning districts. These regulations recognize that certain use types have characteristics that require additional controls in order to protect public health, safety, and welfare. These regulations complement the use regulations contained herein and are cross-referenced in Table 4.1.
Permitted Uses By Zoning District.

5.02 Supplemental Use Regulations: Agricultural Uses

Nothing in these provisions shall relieve any property owner or user from satisfying any condition or requirement associated with a previous approval, special use permit, variance, Floodplain Development Permit, or other permit issued under any local, State, or Federal regulation or statute.

- A. Crop Production in Non-Agricultural Districts: Crop production is a permitted interim use in any zoning district.
- B. Horticulture and Crop Production - Retail Sales: Retail operation of garden centers or roadside stands associated with a primary agricultural use may be permitted in the AG District, subject to the following requirements:
 - 1. Roadside Stands / On-Site Farm stand: A facility used on a temporary or seasonal basis for the retail sale of produce. A temporary structure not permanently affixed to the ground and is readily removable in its entirety, which is used solely for the display or sale of farm products produced on the premises upon which such roadside stand is located. No roadside stand shall be more than 300 square feet in ground area and there shall not be more than one roadside stand on any one premise.

A roadside stand may be located within a required front yard.

Subject to approval as an accessory to a community garden, market garden or urban farm; may require a special or temporary use permit. May only sell products of the farm or garden occupied and cultivated by the same producer. One stand permitted per garden; stand must be temporary and removable; signage must meet sign regulations.
- C. Commercial Feedlot:

No new commercial feedlots shall be established within the zoning jurisdiction of Douglas County.

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D. Animal Production in Residential Districts

Breeding and raising of small animals and fowl, such as birds, rabbits, chinchilla, and hamsters is permitted in residential districts, provided that any building housing such animals shall be at least 50 feet from any property line.

Within the residential districts, any lot may have a fenced two acre area dedicated to the confinement of one horse, llama, or other equine and/or hoofed animal. Such a lot may have one additional animal for each additional two acres of lot area, up to a maximum total of ten animals. No stable shall be located closer than 50 feet to any dwelling unit on the site or 50 feet to any property line.

E. Horticulture and Crop Production in Residential Districts: Operation of landscape business associated with a primary residence may be permitted in the AG or RR District, subject to the following requirements:

1. Landscape Business in AG District: Landscape businesses must conform to all site development regulations.
 - a. Off-Street parking to be provided as per Table 10.1.
 - b. Accessory Building(s) for the landscape business is allowed subject to limits in the AG District.
 - c. Outside storage of materials shall be limited to items used for landscaping which shall include, but not be limited to, mulch, rock, fencing, erosion matting, straw bales and wattles. All storage of materials must be at least 50 feet from public rights-of-way and at least 150 feet from residence on adjacent property.
 - d. Outside storage of equipment and vehicles is allowed, must be at least 50 feet from public rights-of-way and at least 150 feet from residence on adjacent property.
 - e. Composting of plant materials must be at least 150 feet from public rights-of-way and at least 200 feet from residence on adjacent property.
 - f. Signage is allowed as per Article 11, Sections 11.04 & 11.05 & Tables 11.1 & 11.2 with the following additional conditions:
 - Interior illumination of signs is not allowed. Other lighting styles shall conform to requirements of 11.05.A.
2. Landscape Business in RR District: Landscape businesses must conform to all site development regulations.
 - a. Any building, storage and parking area must maintain a 20-foot landscaped buffer yard, consistent with the standards established in Article 9.09.
 - b. Off-Street parking to be provided as per Table 10.1.

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- c. Accessory Building(s) for the landscape business use shall be limited to 20% of the rear yard area.
- d. Outside storage of materials shall be limited to items used for landscaping which shall include, but not be limited to, mulch, rock, fencing, erosion matting, straw bales and wattles. All storage of materials must be kept within the rear yard and subject to the limits noted in paragraph g below.
- e. Outside storage of equipment and vehicles is allowed, must be kept in the rear yard and subject to the limits noted in paragraph g below.
- f. Composting of plant materials is allowed in the rear yard subject to limits noted in paragraph g below and must be at least 100 feet from any residences on adjacent properties.
- g. The total area of any accessory buildings, outdoor storage of materials, equipment or vehicles and composting shall not exceed 40% of the rear yard area.
- h. On site plan production is allowed in the rear and/or side yards only.
- i. Signage is allowed as per Article 11, Sections 11.04 & 11.05 & Tables 11.1 & 11.2 with the following additional conditions:
 - Interior illumination of signs is not allowed. Other lighting styles shall conform to requirements of 11.05.A.
 - Size is limited to 4 square feet.

5.03 Supplemental Use Regulations: Residential Uses

- A. Single-Family Attached: Where permitted, the minimum side yard opposite the common wall shall be equal to twice the normal required side yard.
- B. Mobile Home Residential in the MH District

Mobile Home Parks and mobile home residential use are permitted in the MH District. No mobile home shall be located outside of a Mobile Home Park or Mobile Home Subdivision. A Mobile Home Park is subject to compliance with the following regulations:

1. Certification

The Building Official is authorized to perform an annual inspection of any mobile home park to ensure compliance with these regulations.

These regulations do not address the structural integrity of any units within a mobile home park. Compliance with these regulations does not represent county warrant of the structural integrity of any structure or unit in such a facility.

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2. Special Use Exceptions

Business offices shall be permitted in this district if management of the mobile home park is the primary function of the office.

3. Minimum and Maximum Site Area

A mobile home park shall be considered to be one zoned lot. The Minimum area for a mobile home park shall be two acres.

4. Minimum Yard Requirements

Yards of twenty (20) feet shall be maintained between any structure and the approved building side lines this district.

5. Special Provisions:

Any person requesting change of a zone to an MH District for the purpose of developing a mobile home park shall submit a proper request for change in zone together with the following documents:

- a. Plan of the proposed park showing all utility, street and facility improvements, dimensions of all lots and building sites, proposed size of each lot or site, and location with relation to existing abutting streets and facilities.
- b. Proposed constitution, articles of incorporation and/or bylaws of an association of homeowners or renters within the proposed park which documents will, at a minimum, deal with pet control and garbage and trash control.
- c. Detailed drawings of proposed moorings and tied owns and utility hookups of mobile homes where applicable.
- d. Drawings and plans for individual storage buildings, office and community facilities proposed for any planned park area for mobile homes.

6. Height Limitation

The maximum height of any structure from ground level at the street side shall not exceed 35 feet.

C. Accessory Dwelling Unit (ADU)

An accessory dwelling unit (ADU) is allowed by right when the ADU's building footprint is 75% of the first floor living area of the PDU or less in the AG, RR or R-1 zoning districts.

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1. Conditions: The following conditions apply to all ADU's:
 - a. The accessory dwelling unit shall fit within the building envelope of the lot and located in the rear yard; must use the same materials and finishes as the principal dwelling; and must comply with the dwelling height limit of the district but be no higher than the principal dwelling unit (PDU).
 - b. The owner of the lot is required to live on the property in either the PDU or the ADU.
 - c. The owner of the lot shall file with the Register of Deeds, a deed restriction agreement on the property stating the accessory dwelling cannot be sold separately from the principal dwelling unless the lot is subdivided in accordance with the current subdivision regulations and otherwise meets the requirements of the zoning regulations. The deed restriction agreement shall be filed prior to the issuance of any special use permit and/or building permit.
 - d. As applicable, ADU shall have wheels, axles, transporting lights, removable towing apparatus removed if present and be placed upon a permanent foundation approved by the Building Official.
 - e. The ADU must share the same access point to the public or private street as the PDU.
 - f. The ADU must share utilities with the PDU unless the owner can:
 - Demonstrate a practical problem with sharing due to the topography or other unique site considerations OR
 - Provide documentation that the utility provider requires separate connections.
 - g. The combined number of off-street parking stalls for the ADU and PDU must provide a minimum of three (3) and a maximum of ten (10) spaces. Parking spaces shall meet the size and location requirements of Article 10 – Off-Street Parking.
 - h. The PDU and ADU combined shall comply with all building and impervious coverage maximums as per applicable district. The ADU is included in the Residential Accessory Building Coverage limits.
2. Lot/Parcel: For the purposes of this ADU regulation, the requirements shall also apply generally to tax lots or unplatted parcels that are not building lots (per the subdivision process).

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3. Existing Structures: Existing accessory structures may be converted into or to include an ADU with proper permits and approval. If the existing structure is considered to be non-conforming, the conversion shall not increase the non-conformity.
4. Short-Term Lodging: If the ADU is to be used for short-term lodging purposes, it must conform to the regulations specified for the short-term lodging use, otherwise a special use permit is required. As applicable, the special use permit application for the ADU shall also include the short-term lodging use and include information on its operation.
5. Amendments: The Planning Commission can recommend, and the County Board may amend any of the conditions noted above, with the exception of the deed restriction and public/private street access point conditions, or impose additional conditions, upon a showing that such conditions are reasonably related to the interest of health, safety, and the general welfare of the public.

5.04 Supplemental Use Regulations: Civic Uses

- A. Clubs: Clubs located adjacent to residential uses shall maintain a buffer-yard of not less than fifteen feet along the common boundary with such residential use.
- B. Day Care: Day Care facilities are permitted by Special Use permit in the GI General Industrial Zoning District only if incidental to a permitted primary use.
 1. Day Care Centers (General)

Special Use Permit applications for General Day Care Centers shall specify the number and projected ages of children to be cared for at the facility, and the number of projected full- and part-time staff.
- C. Health Care Facilities and Group Homes

Each health care facility or group home must be licensed by either the State of Nebraska or the appropriate governmental entity.

5.05 Supplemental Use Regulations: Commercial Uses

- A. Auto Repair, Equipment Repair, Body Repair and Travel Center, Truck Stop, RV Storage, and Repair
 1. Where permitted in commercial districts, all repair activities must take place within a completely enclosed building. Outdoor storage is permitted only where incidental to Auto Repair and Body Repair,

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provided that such storage is completely screened so as not to be visible from residential areas or public rights-of-way. Screening is subject to provisions of Article 9.

2. Any spray painting must take place within structures designed for that purpose and approved by the Zoning Coordinator.
3. All fuel pumps shall be set back at least fifteen feet from any street line.

B. Auto Washing Facilities

1. Each conveyor operated auto washing facility shall provide 100 feet of stacking capacity per washing lane on the approach side of the washing structure and stacking space for two vehicles on the exit side.
2. Each self-service auto washing facility shall provide stacking space for three automobiles per bay on the approach side and one space per bay on the exit side of the building.

C. Automobile, RV, and Equipment Rental and Sales

1. All outdoor display areas for rental and sales facilities shall be hard-surfaced.
2. Body repair services are permitted as an accessory use to automobile rental and sales facilities, provided that such repair services shall not exceed 25% of the gross floor area of the building.

D. Campgrounds

1. Minimum Size: Each campground shall have a minimum size of one acre.
2. Setbacks: All campgrounds shall maintain a 50-foot front yard setback and a 25-foot no build buffer-yard from all other property lines
3. Each campground must maintain water supply, sewage disposal, and water and toilet facilities in compliance with all County regulations; or, alternatively, be limited to use by self-contained campers, providing their own on-board water and disposal systems.

E. Convenience Storage

Convenience storage facilities shall be subject to the following additional requirements:

1. The minimum lot size of a convenience storage facility shall be two acres.
2. Activities within the facility shall be limited to the rental of storage cubicles and the administration and maintenance of the facility.

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3. All driveways within the facility shall provide a paved surface with a minimum width of 25 feet.
4. All storage must be within enclosed buildings and shall not include the storage of hazardous materials.
5. No storage buildings may open into required front yards.
6. Facilities must maintain landscaped buffer yards of 35 feet adjacent to any public right-of-way and 20 feet adjacent to other property lines, unless greater setbacks are required by Article 9.

F. Construction Sales and Service

Retail home improvement stores and centers may include outdoor storage of materials and must comply with the following conditions:

1. Architectural design and materials shall be consistent with the current or projected character of the surrounding area.
2. All outside storage or display of merchandise or other materials or equipment shall be screened from view at eye level from a public street or adjacent property.
3. All storage buildings with overhead doors, drive openings, or open bays and all loading areas shall be fully screened from view at eye level from a public street or adjacent property.
4. Minimum screening shall be consistent with screening standards set forth in Article 9.
5. All areas not occupied by buildings or landscaping shall be paved with concrete or asphalt, or surfaced with gravel or similar treatment to reduce dust.

G. Kennels

1. The minimum lot size shall be two acres.
2. No building or runs shall be located nearer than 100 feet from any property line and 500 feet to the property line of any residential use or district.
3. All kennel facilities shall be screened around such facilities or at property lines to prevent distracting or exciting animals. Screening shall be of a type provided by Article 9, establishing landscape and screening standards.

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4. Indoor kennels shall be soundproofed to minimize noise from affecting adjacent properties.

H. Restricted (Adult Entertainment) Businesses

Adult entertainment businesses shall be subject to the following restrictions:

1. No adult entertainment business shall be open for business between the hours of twelve midnight and six a.m.
2. A new adult entertainment business shall not be allowed within 1,000 feet of an existing adult entertainment business.
3. A new adult entertainment business shall not be located within 500 feet of any residentially zoned district or 1,000 feet of a preexisting school, public park, or place of worship.
4. The provisions of this article shall apply to any adult entertainment businesses in existence at the time. Nonconforming use shall be permitted to expand in size or scope and the rights granted in this article shall terminate upon cessation of business, sale or transfer of ownership of the adult entertainment business.
5. Measurement of distances. For the purpose of this article, measurements shall be made in a straight line, without regard to intervening structures or objects, from the main entrance of such adult entertainment business to the point on the property line of such other business, school, church, public park or areas zoned for residential use which is closest to the said main entrance of such adult entertainment business.
6. No adult entertainment business shall be conducted in any manner that permits the observation of models or any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult use. No operator of an adult entertainment business or any officer, associate, member, representative, agent, owner, or employee of such business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the premises which is prohibited by this regulation or any laws of the State or the United States.
7. No part of the interior of the adult entertainment business shall be visible from any pedestrian sidewalk, walkway, street, or other public or semipublic area.
8. An adult entertainment business shall post a sign at the entrance of the premises, which shall state the nature of the business and shall state that no one under the age of eighteen years is allowed on the premises. The

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sign shall comply with the sign regulations herein. This article shall not be construed to prohibit the owner from establishing an older age limitation for coming on the premises.

9. Nuisance Operation: Any adult entertainment business operated, conducted or maintained contrary to the provisions of this article shall be and the same is declared to be unlawful and a public nuisance, and the county attorney may, in addition to or in lieu of prosecuting a criminal action under this article, commence an action or actions, proceeding or proceedings, for the abatement, removal or enjoinder thereof, in the manner prescribed by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such establishment and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment business contrary to the provisions of this article.

I. Garden Centers:

Garden centers must conform to all site development regulations. Any garden center adjacent to a residential district must maintain a 20-foot landscaped buffer yard, consistent with the standards established in Article 9.09.

5.06 Supplemental Use Regulations: Industrial Use

A. Resource Extraction

Resource extraction is subject to the following requirements that supersede any other articles contained herein:

1. Land for resource extraction is typically procured many years in advance of the actual mining operation and therefore specific site plan requirements of the special use permit may not be appropriate at the time of application. Some special use permit process requirements may apply initially to only a portion of the area requested to be included under the special use permit.
2. Time limitations, pursuant to section 13.04.G.1 are not applicable to resource extraction.
3. It is understood that a plant site may need to be relocated within permitted resource extraction areas. Such relocation shall be allowable under the special use permit provided applicable building, etc. permits are obtained.
4. Visual screening of the resource extraction operation is not required with the understanding that the material stockpiles and other resource extraction equipment are generally not able to be screened completely.

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5. Notification and publication requirements for special use permits for resource extraction shall be pursuant to section 13.04 except that the notification distance shall be 300 feet.

B. Salvage Services

1. Screening:

The perimeter of each new facility shall be fully enclosed by opaque, free-standing fencing, screen walls, or berms. Minimum height of this enclosure shall be ten feet. Any such enclosure shall be constructed behind required landscaped buffer yards.

2. Storage of materials within any salvage services facility may not be higher than the height of the surrounding screen fence or wall.

3. No Salvage Services use may be established within 300 feet of the nearest property line of a residential or public use zoning district.

4. Special use permit approval is conditional upon proof of possession of any permit(s) required by the State of Nebraska for operation.

C. Construction Batch Plant, subject to the following requirements that supersede any other portions of this Zoning Regulation:

1. Applicant shall provide the locations of job sites and a map showing the proposed routes to be used to each site to the Environmental Services Department;
2. Hours of operation shall not exceed 12 hours per day and the applicant shall fully identify the specific twelve hours; and
3. Applicant shall provide a calendar year time frame that the batch plant will be operating

5.07 Performance Standards in Industrial Districts

A. The following performance standards apply to all industrial uses permitted within an industrial zoning district:

1. Physical Appearance: All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored outside. Normal daily inorganic wastes may be stored outside in containers, provided that such containers are not visible from the street.

Exception: Resource extraction, subject to the provisions of a special use

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permit, would not be required to have all operations within an enclosed building.

2. Maximum Permitted Sound Levels Adjacent to Residential Zoning Districts: No operation in the LI district shall generate sound levels in excess of 65 dbA between the hours of 7:00 am and 10:00 pm, and 55 dbA between the hours of 10:00 pm and 7:00 am, measured at the boundary of a residential district. All noises shall be muffled so as not to be objectionable because of intermittence, beat frequency, or shrillness.
3. Air Contaminants: No material may be discharged into the air from any source in such quantity as to cause injury, detriment, nuisance, or endanger the health, comfort, welfare, or safety of the public or damage vegetation or property.
4. Odor: The emission of odors determined by the Douglas County Health Department to be obnoxious to most people shall be prohibited. Such odors shall be measured at the property line of the operation.
5. Gases: No release of noxious or poisonous gases shall be permitted except as provided in this article. Measurements shall not exceed 5 parts per million for sulfur dioxide or carbon monoxide or 1 part per million for hydrogen sulfide, measured at the property line of the operation.
6. Vibration: All machines shall be mounted to minimize vibration. No measurable vibration shall occur at the property line of the operation, which exceeds a displacement of 0.003 inch.
7. Glare and Heat: All glare generated by a use shall be shielded or directed so as not to be visible at the property line of the operation. No heat may be generated from an operation that raises the air temperature at the property line of the operation by more than five degrees Fahrenheit above the ambient air temperature.
8. Storage of Chemical Products: Any storage of chemical or petroleum products will follow the following State of Nebraska rules and regulations. Nebraska State Fire Marshal Title 159, Chapter 4, the Design and Installation Standards for New Underground Storage Tank (UST) Systems, Chapter 5, Upgrading Requirements for Existing UST Systems, and Chapter 7, Release Detection Requirements for All UST Systems. Nebraska State Fire Marshal Title 153, Chapter 17, New Tank Installation Permit and Fee Requirement for Aboveground Storage Tanks (AST's) Storing Class I and Class II Flammable Liquids. State Fire Marshal AST Title 158, Requirements for ASTs, Chapters 1 through 3.

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5.08 Supplemental Use Regulations: Miscellaneous Uses

A. Landfills, Putrescible and Non-Putrescible

This article creates standards of operation for the disposal of municipal solid waste in a municipal solid waste landfill.

1. Permits

- a. It shall be unlawful for any person to use any land, premises or property within the County for the disposal of any garbage or refuse without first making application for and securing a special use permit to do so.
- b. The application for a special use permit to operate a sanitary landfill shall be filed with the Permits and Inspection Division and shall contain a description and plat of the land on which the disposal of municipal solid waste is proposed, a description of the sequence and plan of operation, type and capacity of equipment to be used for operations, plans for fire, nuisance and vermin control, existing and proposed roadways and easements, existing topography and water courses, together with a diagram and written statement explaining the proposed location and extent of earthwork and fill operations, proposed measures to monitor ground water and to control storm drainage and landfill gas, and estimated daily or weekly volume of municipal solid waste to be placed in the landfill.
- c. A special use permit to operate a municipal solid waste landfill shall not be issued until the following have been met:
 - i. That the permittee and agents will comply with all of the terms, conditions, provisions, requirements and specifications contained herein.
 - ii. That the permittee and agents will faithfully operate the municipal solid waste landfill for which the permit is issued in accordance with the provisions contained herein.
 - iii. That the permittee and agents, will save harmless the County from any expense incurred through the failure of the permittee, and/or agents, to operate and maintain the municipal solid waste landfill as required by these regulations including any expense incurred by the County for correcting any condition or violation of these regulations by the County's own labor and equipment should the NDEQ or U.S. EPA determine it is necessary

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for the County to correct any unsanitary condition or conditions violative of these regulations or from any damages growing out of the negligence of the permittee or agents .

- iv. Any appropriate permits or authorizations from the County Health Department.

2. Unauthorized Disposal

The dumping of municipal solid waste in open dumps or in unlicensed landfill operations which do not meet the conditions of this regulation is prohibited.

3. Regulations

NDEQ, now known as NDEE, Title 132 – Integrated Solid Waste Management Regulations, shall be followed for landfill operation, closure and post-closure.

B. Wind Energy Conservation Systems (WECS)

- 1. The distance from all lot lines or any building or power line to any tower support base of a WECS shall be equal to the sum of the tower height and the diameter of the rotor plus fifty (50) feet, or shall meet the existing setback requirements of the underlying zoning district, whichever is greater. A reduction of this requirement may be granted as part of a special use permit approval if the County finds that the reduction is consistent with public health, safety, and welfare.
- 2. The distance between the tower support bases of any two WECS shall be the minimum of five rotor lengths, determined by the size of the largest rotor. A reduction of this requirement may be granted as part of a special use permit approval if the County finds that the reduction does not impede the operation of either WECS.
- 3. Any tower or rotor shall maintain a distance of at least 100 horizontal feet from any structure, power line, or antenna located on another property.
- 4. The WECS operation shall not interfere with radio, television, computer, or other electronic operations on adjacent properties.
- 5. A fence eight feet high with a locking gate shall be placed around any WECS tower base; or the tower climbing apparatus shall begin no lower than twelve feet above ground.
- 6. The height of the WECS may exceed the height restrictions of the base

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district by up to 50%. The bottom tip of any rotor must be at least 10 feet above any area accessible to pedestrians.

5.09 Wireless Telecommunications Facilities

A. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed Douglas County's authority concerning the placement, construction and modification of wireless telecommunications facilities. Douglas County finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the County and its inhabitants. The County also recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to the County and its residents. In order to insure that the placement, construction or modification of wireless telecommunications facilities is consistent with the County's land use policies, the County is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this local regulation 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 residents of Douglas County.

B. Title.

This regulation shall be known and cited as the Wireless Telecommunications Facilities Siting Regulation for Douglas County.

C. Severability.

1. If any word, phrase, sentence, part, section, subsection, or other portion of this regulation or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this regulation, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
2. Any special use permit issued under this regulation shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the County.

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D. Definitions.

For purposes of this regulation, 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.

1. "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.
2. ~~"Administrative Special Use Permit" means the issuance or denial of a permit by the Director of Environmental Services, or their designee as allowed in these regulations. The approval or denial shall be based on a review and recommendation of the application by Douglas County Environmental Services Staff and any applicable consultants. This process will not require a public hearing nor presentation to planning commission nor county board.~~
3. "Applicant" means any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.
4. "Application" means all necessary and appropriate documentation that an Applicant submits in order to receive a special use permit for wireless telecommunications facilities.
5. "Antenna" means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
6. "Co-location" means the use of an existing tower or structure to support antennae for the provision of wireless services.
7. "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

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investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".

8. "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.
9. "Board" means the Douglas County Board of Commissioners.
10. "FAA" means the Federal Aviation Administration, or its duly designated and authorized successor agency.
11. "FCC" means the Federal Communications Commission, or its duly designated and authorized successor agency.
12. "Height" means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightening protection device.
13. "Modification" or "Modify" means the addition, removal or change of any of the physical and visually discernible 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 discernible 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.
14. "NIER" means Non-Ionizing Electromagnetic Radiation
15. "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.
16. "Personal Wireless Facility" See definition for 'Wireless Telecommunications Facilities'

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17. "Personal Wireless Services" or "PWS" or "Personal Telecommunications Service" or "PCS" shall have the same meaning as defined and used in the 1996 Telecommunications Act.
18. "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 discernible components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
19. "Special Use Permit" means the official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the County.
20. "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,
21. "State" means the State of Nebraska.
22. "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.
23. "Telecommunication Site" See definition for 'Wireless Telecommunications Facilities'.
24. "Telecommunications Structure" means a structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities'.
25. "Temporary" means, temporary in relation to all aspects and components of this regulation, something intended to, or that does, exist for fewer than ninety (90) days.

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

E. Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the County's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Regulation, the County hereby adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

1. Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility;
2. Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities;
3. Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;
4. Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers;

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5. 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;
6. That in granting a special use permit, the County has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the County;

F. Exceptions from a special use permit for wireless telecommunications facilities.

No Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities as of the effective date of this regulation without having first obtained a special use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those non-commercial exceptions noted in sub-section 5.09 G below.

1. All legally permitted wireless telecommunications facilities, constructed as permitted, existing on or before the effective date of this regulation shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility will require the complete facility and any new installation to comply with this regulation.
2. Any repair and maintenance of a wireless facility does not require the application for a special use permit.

G. Exclusions. The following shall be exempt from this regulation:

1. The County's fire, police, department of transportation or other public service facilities owned and operated by the local government.
2. Federal law enforcement agencies
3. Any facilities expressly exempt from the County's siting, building and permitting authority.
4. Over-the-Air reception devices including the reception antennas for

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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.

5. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications.
6. Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

H. Special Use Permit Application and Other Requirements.

1. All applicants for a special use permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this regulation.

a. The County Planning Commission is the officially designated body of the County to whom applications for a special use permit for new wireless telecommunications facilities or modifications to facilities that include a change in height must be made. The Planning Commission is authorized to review, analyze, evaluate and make a recommendation to the Board with respect to granting or not granting or revoking special use permits for wireless telecommunications facilities. The Board will make the decision with respect to granting or not granting or revoking special use permits for wireless telecommunications facilities.

b. The County Planning Commission and County Board is delegating review and approval of the special use permit application for co-location or modification to facilities that do not include a change in height to the Director of Environmental Services or their designee as allowed in these regulations under an "Administrative Special Use Permit" process. The administrative process should allow minor changes to existing sites in a more efficient manner.

2. The County may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
3. No wireless telecommunications facilities shall be installed, constructed or modified until the application is reviewed and

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approved by the County, the special use permit has been issued, and any appropriate building permit(s) has/have been issued.

4. Any and all representations made by the applicant to the County 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 County.
5. An application for a special 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.
6. The applicant must provide documentation to verify it has the right to proceed as proposed on the telecommunications 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.
7. The applicant shall include a statement in writing:
 - a. That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations;
 - b. 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.
8. Where a certification is called for in this regulation, such certification shall bear the signature and seal of a professional engineer licensed in the State.
9. In addition to all other required information as stated in this regulation, 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.

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- a. 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;
- b. Documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service primarily and essentially within the County. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, include an analysis of current and projected usage;
- c. The name, address and phone number of the person preparing the report;
- d. 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 that the applicant, provide name and address of the tower owner;
- e. The postal address and tax map parcel number of the property;
- f. The zoning district or designation in which the property is situated;
- g. Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- h. The location of nearest residential structure;
- i. The location, size and height of all existing and proposed structures on the property which is the subject of the application; such property being defined as the underlying parcel of land and not just that which may or may not be the subject of a lease agreement;
- j. The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- k. The azimuth, size and center line height location of all proposed and existing antennae on the supporting structure;
- l. The number, type and model of the antenna(s) proposed with a copy of the specification sheet;

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- m. The make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users;
 - n. A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - o. The frequency, modulation and class of service of radio or other transmitting equipment;
 - p. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
 - q. 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;
 - r. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
 - s. A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
 - t. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if existing tower or water tank site, a copy of the installed foundation design.
10. 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

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from the FAA and any related correspondence shall be provided with the application.

11. Application for New Tower

- a. 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 County. Copies of written requests and responses for shared use shall be provided to the County in the application, along with any letters of rejection stating the reason for rejection.
- b. In order to better inform the public, in the case of a new n-cap 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 County. The applicant shall inform the County, 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.
- c. The applicant shall examine the feasibility of designing the proposed tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate at least four (4) additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable

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burden, based upon:

- i. The foreseeable number of FCC licenses available for the area;
 - ii. The kind of wireless telecommunications facilities site and structure proposed;
 - iii. The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
 - iv. Available space on existing and approved towers.
- d. 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:
- i. Respond within 60 days to a request for information from a potential shared-use applicant;
 - ii. Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
 - iii. 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.
 - iv. Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.
12. 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 is designed and will be constructed to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads.

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13. If proposal is for a co-location or modification on an existing tower, the applicant is to provide signed documentation of the tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA- 222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self- supporting towers.
14. All proposed wireless telecommunications facilities shall contain a demonstration that the facility be sited so as to be the least visually intrusive reasonably possible, given the facts and circumstances involved and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the wireless telecommunications facility.
15. If 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:
 - a. 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.
 - b. Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the County 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. A map shall be provided showing the locations of where the pictures were taken and distance from the proposed structure.
 - c. A written description of the visual impact of the proposed facility including 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.
16. 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.

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17. 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 County.
18. All utilities at a wireless telecommunications facilities site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the adopted electrical code.
19. 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. Further, all such telecommunications sites shall comply fully with the County's Storm water Management Regulations.
20. 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 County, 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.
21. A holder of a special use permit granted under this regulation shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.
22. There shall be a pre-application meeting for all new facility locations, facility modification that change the height or visual impact or for a co-

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location application. 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. Costs of the County's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

a. A pre-application meeting could be waived for a facility modification that only changes out equipment on an existing tower. Coordinate with the Douglas County Planning and Zoning Coordinator on the meeting waiver and number of copies required for application.

23. An applicant shall submit to the County the number of completed applications determined to be needed at the pre-application meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.
24. The holder of a special use permit shall notify Douglas County of any intended modification of a wireless telecommunication facility and shall apply to the County to modify, relocate or rebuild a wireless telecommunications facility.

I. Location of Wireless Telecommunications Facilities.

1. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities (a) being the highest priority and (g) being the lowest priority.
 - a. On existing towers or other structures on County owned properties;
 - b. On existing towers or other structures on other property in the County;
 - c. A new tower on County-owned properties;
 - d. A new tower on properties in areas zoned for Heavy Industrial use;
 - e. A new tower on properties in areas zoned for Mixed Use;
 - f. A new tower on properties in areas zoned for Agricultural use;
 - g. A new tower on properties in areas zoned for Residential use.

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2. 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 applicant 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 was not granted for the proposed site.
3. 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 County why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co- location shall not be a valid basis for any claim of commercial impracticability or hardship.
4. Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
5. 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.
6. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an application for any of the following reasons:
 - a. Conflict with safety and safety-related codes and requirements;
 - b. Conflict with the historic nature or character of a neighborhood or historical district;
 - c. The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
 - d. The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public,

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employees and agents of the County, or employees of the service provider or other service providers;

e. Conflicts with the provisions of this regulation.

J. Shared use of Wireless Telecommunications Facilities and other structures.

1. The County, as opposed to the construction of a new tower, shall prefer locating on existing towers or other 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.
2. 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.
3. Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.

K. Height of Telecommunications Tower(s).

1. The applicant shall submit documentation justifying the total height of any tower, facility and/or antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') ft. 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 County, to the extent practicable, unless good cause is shown.
2. No tower constructed after the effective date of this regulation, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, County, State, and/or any Federal statute, law, local law, County code, rule or regulation.
3. Under no circumstances shall a new tower exceed 120 feet in height unless relief is granted pursuant to this regulation.

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L. Visibility of Wireless Telecommunications Facilities.

1. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
2. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this regulation.
3. If lighting is required, applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

M. 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:

1. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
2. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

N. 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. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

O. Lot Size and Setbacks.

All proposed towers and any other proposed wireless telecommunications facility

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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.

P. Retention of Expert Assistance and Reimbursement by Applicant.

1. The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.

2. An applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County 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 as noted under the original deposit column in the table below based on the proposed improvement. The placement of the deposit with the County shall precede the pre-application meeting. The County will maintain a separate account in an organization within the general fund for all such funds. The County's consultants/experts shall invoice the County for its services related to the application. If at any time during the process this account has a balance less than \$2,000.00, the applicant shall immediately, upon notification by the County, replenish said account so that it has a balance as noted in table below under replenishment. Such additional funds shall be deposited with the County before any further action or consideration is taken on the application. In the event that the amount held in by the County 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.

<u>Application for:</u>	<u>Original Deposit</u>	<u>Replenishment</u>
<u>New Tower</u>	<u>\$8,500.00</u>	<u>\$5,000.00</u>
<u>Tower Height Change</u>	<u>\$8,500.00</u>	<u>\$5,000.00</u>
<u>Co-Location</u>	<u>\$4,500.00</u>	<u>\$3,000.00</u>
<u>Equipment Modification</u>	<u>\$4,500.00</u>	<u>\$3,000.00</u>

3. The total amount of the funds needed as set forth in P2 above may vary

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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.

Q. Public Hearing and Notification Requirements.

1. Prior to the approval of an application for a special use permit for wireless telecommunications facilities for a new tower or modification to facilities that include a change in height, a public hearing shall be held by the County Planning Commission, notice of which shall be published in the official newspaper of the County no less than ten (10) calendar days prior to the scheduled date of the public hearing. In order that the County may notify nearby landowners, the application in the case of a new tower in the AG zoning district shall contain the names and address of all landowners whose property is located within one (1) mile of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located. In the case of a new tower in any other (non-AG) zoning district the notification distance shall be fifteen hundred (1500) feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located. Following Planning Commission action on the application (recommendation to approve or deny) a second public hearing will be scheduled before the Board.

a. The County shall schedule the public hearing as noted above, once it finds the application is complete.

2. For the approval of an application on an administrative special use permit for wireless telecommunications facilities for a co-location or modification (no height change), public hearings are waived by the Planning Commission and County Board.

3. The County, at any stage prior to issuing the special use permit, may require such additional information as it deems necessary.

R. Action on an Application for a Special Use Permit for Wireless Telecommunications Facilities.

1. The County will undertake a review of an application pursuant to this article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.

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Deleted: The County shall schedule the public hearing referred to in subsections Q1 and Q2 of this section once it finds the application is complete. The County, at any stage prior to

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2. The County may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.
3. After the public hearing, where applicable, and after formally considering the application, the County may approve, approve with conditions, or deny a special use permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.
4. If the County approves the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such approval in writing within ten (10) calendar days of the County's action, and the special use permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a special use permit has been granted hereunder, no additional permits or approvals from the County, such as site plan or zoning approvals, shall be required by the County for the wireless telecommunications facilities covered by the special use permit.
5. If the County denies the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such denial in writing within ten (10) calendar days of the County's action.

S. Extent and Parameters of Special Use Permit for Wireless Telecommunications Facilities.

The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

1. Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the County.
2. Such special use permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this regulation after prior written notice to the holder of the special use permit.

T. Application Fee.

At the time that a person submits an application for a special use permit for a new

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tower or a modification to change tower height, such person shall pay a non-refundable application fee of \$5,000.00 to the County. If the application is for a special use permit for co-locating on an existing tower or other suitable structure, where no increase in height of the tower or structure is required, the non-refundable fee shall be \$2,500.00. If the application is for the modification of tower or equipment, not changing the height, the non-refundable fee shall be \$2,500.00.

U. 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 County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this regulation and conditions of any special use permit issued pursuant to this regulation. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original special use permit. Modification of Tower or Equipment shall not require a separate surety from the original tower, however the surety shall match that required by this section at the time of the modification.

V. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a special 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 County 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.

W. Liability Insurance.

1. A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the special use permit in amounts as set forth below.

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- a. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - b. Automobile Coverage: \$1,000,000.00 per occurrence/\$2,000,000 aggregate;
 - c. Workers Compensation and Disability: Statutory amounts
2. For a wireless telecommunications facility on County property, the Commercial General Liability insurance policy shall specifically include the County and its officers, councils, employees, committee members, attorneys, agents and consultants as additional insured's.
 3. 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.
 4. The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
 5. Renewal or replacement policies or certificates shall be delivered to the County at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
 6. Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than fifteen (15) days after the grant of the special use permit, the holder of the special use permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.
- X. Indemnification.
1. Any application for wireless telecommunication facilities that is proposed for County property, pursuant to this regulation, 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 County, 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

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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 County, 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 County.

2. Notwithstanding the requirements noted elsewhere in this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a special use permit for wireless telecommunications facilities.

Y. Fines.

1. In the event of a violation of this regulation or any special use permit issued pursuant to this regulation, the County may impose and collect, and the holder of the special use permit for wireless telecommunications facilities shall pay to the County, fines or penalties as set forth below.
2. The holder of a special use permits failure to comply with provisions of this regulation shall constitute a violation of this regulation and shall subject the applicant to the code enforcement provisions and procedures of the Douglas County Zoning and other regulations.
3. Notwithstanding anything in this regulation, the holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this regulation or any section of this regulation. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The County may also seek injunctive relief to prevent the continued violation of this regulation, without limiting other remedies available to the County.

Z. Default and/or Revocation.

If a wireless telecommunications facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this regulation or of the special use permit, then the County shall notify the holder of the special use permit in writing of

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such violation. A permit holder in violation may be considered in default and subject to fines as in Section 1 above and if a violation is not corrected to the satisfaction of the County in a reasonable period of time the special use permit is subject to revocation.

AA. Removal of Wireless Telecommunications Facilities.

1. Under the following circumstances, the County may determine that the health, safety and welfare interests of the County warrant and require the removal of wireless telecommunications facilities.
 - a. Wireless telecommunications facilities with a permit have been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred- eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
 - b. Permitted wireless telecommunications facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - c. Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization and the special use permit may be revoked.
2. If the County makes such a determination as noted in AA. 1) a, b, c above, then the County shall notify the holder of the special use permit for the wireless telecommunications facilities within forty-eight (48) hours that said wireless telecommunications facilities are to be removed, the County may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.
3. The holder of the special use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the County. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless

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telecommunications facilities, the owner may do so with the approval of the County.

4. If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within ninety (90) days after the permit holder has received notice, then the County may order officials or representatives of the County to remove the wireless telecommunications facilities at the sole expense of the owner or special use permit holder.
5. If the County 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 County may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.
6. Notwithstanding anything in this Section to the contrary, the County may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the County, and an agreement to such plan shall be executed by the holder of the special use permit and the County. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the County may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

BB. Relief.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this regulation may request such at the pre-application meeting, provided that the relief or exemption is contained in the submitted application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the County in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the County, its residents and other service

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providers.

CC. Periodic Regulatory Review by the County.

1. The County may at any time conduct a review and examination of this entire regulation.
2. If after such a periodic review and examination of this regulation, the County determines that one or more provisions of this regulation should be amended, repealed, revised, clarified, or deleted, then the County may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the County, the County may repeal this entire regulation at any time.
3. Notwithstanding the provisions of subsections 1 and 2 above, the County 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 regulation.

DD. Adherence to State and/or Federal Rules and Regulations.

1. To the extent that the holder of a special 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 special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
2. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such a special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or

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provision, or sooner as may be required by the issuing entity.

EE. Conflict with Other Laws.

Where this regulation differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or federal government, this regulation shall apply.

FF. Effective Date.

This regulation shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

GG. Authority.

This local regulation is enacted pursuant to applicable authority granted by the State and federal government.

5.10 Small Wireless Facilities

A. Findings and purpose.

The Douglas County Board of Commissioners finds that it is necessary to achieve a balance between the telecommunications needs of the citizens, and the orderly, safe, and aesthetic deployment of small wireless facilities by telecommunications companies. The deployment of small wireless facilities is expected to enable the provision of improved and enhanced wireless services to citizens and visitors in the County. The FCC has encouraged and required the adoption of policies supporting the deployment of small wireless facilities, in its September 27, 2018 Declaratory Ruling and Third Report and Order, WT Docket Nos. 17-79 and 17-84. Also, 2019 Legislative Bill 184 imposed new limits on the local regulation of small wireless facilities. Those actions encourage the placement of such small wireless facilities in public rights-of-way.

The County is responsible for the safe and aesthetic maintenance of its public rights-of-way, for the benefit of the public and for the protection of public health, safety, and welfare. Public rights-of-way are a finite resource, and are subject to demands from competing interests. It is necessary to govern their use in a fair, safe, and orderly manner. This includes the proposed use of public right-of-way for telecommunications purposes. The County is also responsible for the processing and review of proposed telecommunications uses for properties other than public rights-of-way, with the objective of protecting public health, safety, and welfare.

It is therefore appropriate to adopt these rules and regulations for the

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processing and review of proposed small wireless facilities, both on public rights-of-way and on other properties.

The purpose of this article is to adopt regulations governing the safe, responsible, and fair deployment of small wireless facilities on public rights-of-way and on other properties.

It is the further purpose of this article to comply with or adopt provisions stated in the said September 27, 2018 FCC Order and 2019 Legislative Bill 184.

B. Definitions.

For the purposes of this article only, the following terms have the following meanings:

1. Action or to act: The County's grant of an application or issuance of a written decision denying an application.
2. Antenna: Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.
3. Applicable codes: Building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with federal or state law and to the extent such codes have been adopted by the County and are generally applicable in the County.
4. Applicant: Any person who submits an application and is a wireless provider.
5. Application: A written request submitted by an applicant to the County (1) for a permit to collocate small wireless facilities on an existing utility pole or support structure, or (2) for a permit for approval for the installation, modification, or replacement of a utility pole to support the installation of a small wireless facility.
6. Authorization: Any approval that the County must issue under this article and applicable codes prior to the deployment of a small wireless facility, along with any associated antenna equipment and support structure, including, but not limited to, zoning approval, building permit, electrical permit, excavation permit and all other permits or approvals under this article.
7. Cantenna: A cylindrical shaped antenna.
8. Collocate or collocation: To install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a support structure or utility pole. "Collocate" or "collocation" does not include the installation of a new utility pole or new support structure in the right-of-way.
9. Communications facility: The set of equipment and network components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), as such section existed on January 1, 2019, a telecommunications carrier as defined in 47 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of information service as defined in 47

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U.S.C. 153(24), as such section existed on January 1, 2019, or a wireless services provider, to provide communications services, including cable service as defined in 47 U.S.C. 153(8), as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, wireless services, or other one-way or two-way communications service.

10. Communications network: A network used to provide communications service.
11. Communications service: A cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, or a wireless service.
12. Communications service provider: A cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, as such sections existed on January 1, 2019. Communications service provider includes a wireless provider.
13. Decorative pole: A pole that is owned, managed, or operated by the County and specially designed and placed for aesthetic purposes.
14. Deployment: Placement, construction, or modification of a small wireless facility.
15. FCC: The Federal Communications Commission.
16. Fee: A one-time, non-recurring charge, to be collected upon application.
17. Ground mounted equipment: Equipment situated at or below grade level, such as at or near sidewalks, drive aisles or streets, and is distinct from equipment mounted on existing infrastructure, such as telephone poles or buildings.
18. Historic district: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with Stipulation VI.D.1.a (i)-(v) of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission codified at 47 C.F.R. part 1, Appendix C, as such regulation existed on January 1, 2019, or designated pursuant to state historic preservation law if such designation exists at the time of application.
19. Law: Federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
20. Landmark: Any building, structure, site, or area designated for preservation as a landmark by either State, county, or federal action.
21. Make-ready work: All work, as reasonably determined by the County,

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

22. Micro wireless facility: A small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and with any exterior antenna no longer than 11 inches.
23. Ordinary maintenance or repair: Inspections, testing or repairs that maintain functional capacity, aesthetic and structural integrity of a facility.
24. Panel antenna: A flat, rectangular shaped antenna.
25. Permit: A written authorization, in electronic or hard copy format required by the County to perform an action, initiate, continue, or complete installation of a small wireless facility on an existing utility pole or an existing support structure, or to install, modify, or replace a utility pole to support installation of a small wireless facility.
26. Permittee: An applicant that has received a permit under this article, and its successors and assignees.
27. Person: An individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization.
28. Public power supplier: A public power district or any other governmental entity providing electric service. "Public power supplier" includes a municipal electric utility or a rural public power supplier.
29. Rate: A recurring charge, collected on a regular basis such as annually.
30. Replace or replacement: In connection with an existing utility pole or support structure, to replace (or the replacement of) same with a new pole or structure in conformance with this article and any other applicable codes, in order to address limitations of the existing pole or structure to structurally support collocation of a small wireless facility.
31. Right-of-way: The area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in section 39-1302, the National System of Interstate and Defense Highways, or a private easement.

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32. Rural public power supplier: A public power district, a public power and irrigation district, an electric cooperative, or an electric membership association, that does not provide electric service to any city of the metropolitan class, city of the primary class, or city of the first class.
33. Shot clock: The period of time in which the County is required to act on an application.
34. Small wireless facility: A wireless facility that meets each of the following conditions:
 - a. Are mounted on structures 50 feet or less in height including the antennas, or
 - b. Are mounted on structures no more than ten percent taller than other adjacent structures;
 - c. Each antenna associated with the deployment is no more than three cubic feet in volume;
 - d. All other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than 28 cubic feet in volume;
 - e. The facilities do not require antenna structure registration under 47C.F.R. part 17, as such regulation existed on January 1, 2019;
 - f. 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
 - g. The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.
35. Support structure: A structure such as a guyed or self-supporting tower, billboard, building, or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of small wireless facilities. "Support structure" does not include a utility pole.
36. Tolling Period: Allowing for the pausing or delaying of the running of a period of time set forth herein.
37. Technically feasible: By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location, can be implemented without a reduction in the functionality of the small wireless facility.
38. Utility pole or pole: A pole located in the right-of-way that is used for wireline communications, lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right-of-

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way. "Utility pole" does not include:

- a. Support structures;
- b. Any transmission infrastructure owned or operated by a public power supplier or rural power supplier; and
- c. Any distribution of communications infrastructure owned or operated by a rural public power supplier.

- 39. Wireless facility: Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications, and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular power supply, and small back-up battery, regardless of technological configuration. "Wireless facility" includes small wireless facilities. "Wireless facility" does not include: (a) the structure or improvements on, under or within the equipment which is collocated, (b) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to, or directly associated with a particular antenna, or (c) a wireline backhaul facility.
- 40. Wireless infrastructure provider: Any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or support structures, but that is not a wireless services provider.
- 41. Wireless provider: A wireless services provider or wireless infrastructure provider when acting as a co-applicant for a wireless services provider.
- 42. Wireless services: Any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.
- 43. Wireless services provider: A person who provides wireless services.
- 44. Wireline backhaul facility: An above-ground or underground facility used to transport communications services from a wireless facility to a communications network.

C. Applicability.

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

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for smaller fees or rates. Small wireless facilities shall be governed by this article. This article shall not apply to the design, engineering, construction, installation, or operation of any small wireless facility located in the interior structure or upon the site of any college or university campus, stadium, or athletic facility not owned or controlled by the county, other than to comply with applicable codes. For an application submitted to the State of Nebraska regarding a location within right-of-way or other property owned or controlled by the State, to the extent that the State seeks a recommendation from the county regarding such application, the county shall apply the location and design standards of this article. The applicant for a location on such State right-of-way or other property shall provide to the county a copy of the application submitted to the State but no application fee shall be due.

D. Permit required.

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

E. Application.

Form and content. Application for a permit under this article shall be filed with the Douglas County Environmental Services Department, Planning Division, on a form provided by that division. On or in addition to that form, an application shall include the following:

1. The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the applicant.
2. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the application.
3. A description of the proposed work and the purposes, intent, and ultimate user of the proposed small wireless facility.
4. Any and all additional application forms and necessary documentation for all permits required for the installation, maintenance, or operation of a small wireless facility, including but not limited to electrical permits,

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grading permits, and certificates of approval for facilities within a landmark or historic district.

5. If applicable, written authorization from the owner of the utility pole or support structure on which the small wireless facility will be placed or attached, if not the county. For a utility pole or support structure owned or controlled by an owner other than the County, the applicant shall provide proof of approval of the specific plans by that owner.
6. If applicable, a separate permit from the Douglas County Engineer will be required to occupy Douglas County Road Right of Ways. Such installation and maintenance shall conform to the Nebraska Department of Transportation "Policy for Accommodating Utilities on State Highway Right of Ways or as modified by the Douglas County General Rules and Regulations for Accommodating Utilities on County Right of Way.
7. All applications shall provide supporting documentation of compliance with applicable building, structural, electrical, FCC Regulations and safety codes or with other laws codifying objective standards reasonably related to health and safety. The County may condition approval on such compliance.
8. Detailed construction drawings regarding the proposed small wireless facility, and any associated equipment and utility pole or support structure. The drawings shall show the location, dimensions, elevations, equipment specifications, and attachment methods for the small wireless facility, all equipment, and the utility pole or support structure.
9. To the extent the proposed small wireless facility involves collocation on a utility pole or support structure, a structural report performed by a duly licensed engineer evidencing that the pole or support structure will structurally support the collocation (or that the pole or support structure will be modified to meet structural requirements) in accordance with applicable codes.
10. For any new above ground antenna equipment, accurate visual depictions and locations, if not included in the construction drawings.
11. A full description of any make-ready work to be performed by the county in preparation for the proposed installation and use of the small wireless facility, associated equipment and utility pole or support structure.
12. The application fee as required by this article.
13. Bond and certificate of insurance as required by this article.
14. The application form shall include:
 - a. Language providing for the indemnification of the county by the

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applicant as required by this article; and

- b. An attestation by the applicant that the small wireless facility shall be operational for use by a wireless services provider within nine months after the later of the completion of all make-ready work or the permit issuance date, unless a delay is caused by lack of commercial power or communications transport facilities to the site, in which case the deadline shall be extended for up to nine months.
 - i. The applicant's signature on and submittal of the application shall constitute agreement to subsections (a) and (b) above.

F. Batching.

An applicant may apply for more than one but no more than 30 small wireless facilities in a single application, provided that all information required by this section is provided for each separate small wireless facility. Provided full and complete information is submitted for each small wireless facility, a single set of plans and information may address more than one small wireless facility. Application fees shall be paid for each small wireless facility, as provided in this article. Each small wireless facility within a consolidated application is subject to individual review, except 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.

G. Replacement or modification.

A permittee shall be required to file an application and pay an application fee for the proposed replacement or modification of an existing small wireless facility, antenna equipment, or associated utility pole or support structure. In such case, the application shall include updated drawings of the facilities showing such replacement or modification. Such proposed replacement or modification shall be reviewed and acted upon by the county as if it were an initial application. This paragraph does not apply to ordinary maintenance or repair, or to the replacement of a small wireless facility with a small wireless facility that is substantially similar in weight or windage or the same size or smaller, in which case no permit, application or fee is required.

H. Shot clock.

The county shall act on a filed application, and all associated requests, on or before the expiration of the shot clock period.

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

Ninety days, plus an additional ten business days if requested in writing by the county prior to the expiration of the 90 days, plus such additional number of days of the tolling period, if any, pursuant to:

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

1. If the county notifies the applicant in writing on or before the twentieth day after submission that the application is incomplete, and specifically identifies the missing documents or information, the shot clock date calculation shall restart at zero on the date the county notifies the applicant of the first finding of incompleteness. The applicant may resubmit the completed application within 30 days without additional charge.
2. Subsequent findings of incompleteness shall further reset the shot clock from the time the county sends a written notice of incompleteness until the time the applicant provides the missing information.
3. If the applicant submits new or additional documents or information that, at the discretion of the County, include material changes not otherwise required by the county, a new application and application fee shall be submitted.

The shot clock deadline for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant herein; provided, that if the deadline calculated in this manner falls on a weekend or holiday, the deadline shall be the next business day after such date. The term "business day" means any day that is not a weekend day or holiday.

An application shall be processed on a nondiscriminatory basis and deemed approved if the county fails to approve or deny the application within 90 days after receipt of the application, or such longer period as permitted under this "shot clock" subsection.

I. Permit issuance.

Approval of an application and issuance of any required permits, which shall include but not be limited to appropriate building, electrical or grading permits.

J. Fees.

1. Application fees. An application under this article for authorization for a small wireless facility on an existing utility pole shall be accompanied by an application fee in the amount of \$500.00 for up to five small wireless facilities, plus \$100.00 for each additional small wireless facility. An

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application for authorization for a new, modified, or replacement utility pole or support structure intended to support one or more small wireless facilities and the collocation of an associated small wireless facility that are permitted in accordance with this article shall be accompanied by an application fee of \$250.00.

1. Annual rate. There is a \$50 annual rate for each small wireless facility attached to a utility pole in the county's right-of-way to be paid by or before January 1, in advance for the ensuing year.

K. Reimbursement of direct costs.

If the applicant or permittee excavates or damages county right-of-way or other county property and the county repairs such excavation or damage, the applicant or permittee shall reimburse to the county the actual reasonable, documented cost of such repair, as provided herein.

L. Independent Technical and Legal Review.

The County may retain the services of an independent technical consultant and an attorney of its choice to provide technical and legal evaluations of applications submitted pursuant to this Article. The review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed use of the right-of-way complies with this Article and other applicable provisions of this Regulation. The applicant shall pay the cost for any independent technical consultant and attorneys' fees through a deposit with the County, estimated by the County, within 10 business days of the County's request. When the County requests such payment, the application shall be deemed incomplete until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the County shall refund any unused portion. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the County. The technical consultant and attorney shall provide an itemized description of the services provided and related fees and costs. The fees shall be limited to a reasonable approximation of costs and the costs shall be reasonable.

M. Interference, removal, and abandonment.

In the event that any facility of a permittee on county right-of-way or county property obstructs or hinders the usual travel or public safety or obstructs the legal use of such right-of-way or property by utilities or other authorized users, the county may provide written notice to the permittee of such interference and of the need to resolve such interference. In the event that any such facility of the permittee causes any radio frequency interference to any county facilities or other uses of county right-of-way or county property,

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the county may notify the permittee in writing of such interference and the need to resolve such interference. Upon service of any notice under this subsection, the permittee shall remedy such interference within 90 days or, in the case of an emergency, within such shorter time period as directed by the county. If such interference is not resolved in a timely manner, the permittee shall, at its own expense, remove its facilities from that location. In such case, the permittee may apply for the relocation of similar facilities at another location, without payment of an application fee.

Within 90 days following written notice from the county, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its facilities, whenever the county has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any county improvement in, under or upon the public right-of-way. The permittee shall be responsible to the county for any damages or penalties the county may incur as a result of the permittee's failure to remove or relocate the facilities as required.

The county retains the right and privilege to cut or move any facility of the permittee located within the public right-of-way or on county property, as the county may determine in its sole discretion to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the county shall notify the permittee and give the permittee an opportunity to move its own facilities prior to cutting or removing the facilities. In all cases the county shall notify the permittee after cutting or removing the facilities as promptly as reasonably possible.

The permittee may abandon its facilities at a location. The permittee shall notify the county of abandonment of any facility at the time the decision to abandon is made, but in no case shall such notification be made later than 30 days prior to abandonment. The permittee shall, within 30 days of such notice, remove its facilities at the permittee's own expense, unless the county determines and states in writing, in its sole discretion, that any part of the facilities may be abandoned in place. The permittee shall remain solely responsible and liable for all of its facilities until they are removed from the public right-of-way unless the county agrees in writing to take ownership of the abandoned facilities. For the purpose of this subsection, abandonment of facilities and cancellation of the related permit shall also be deemed to have occurred after such facilities are not used for a period of one year.

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

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N. Indemnification.

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

O. Insurance.

Upon and after application, the permittee of a permit under this article shall procure and thereafter continuously maintain for as long as any permit in its favor remains in effect, at the permittee's expense, commercial general liability insurance with a limit of \$2,000,000.00 per occurrence for bodily injury (including death) and property damage and \$2,000,000.00 general aggregate, including explosion, collapse and underground property damage. Upon receipt of notice from its insurer(s), the permittee shall provide the county with 30 days prior written notice of any prospective cancellation unless the coverage is replaced. A certificate of insurance shall be provided with the application. The policy shall be available for review by the county upon request. The policy shall include the county as additional insured as their interest may appear under this article. Permittee may self-insure any of the required insurance under the same terms as required by this article.

Upon and after application, the permittee of a permit located on right-of-way or other county property shall provide and maintain in effect a bond with a surety, in favor of the county, in the amount of \$200,000.00, to cover all permitted sites of the permittee. The County reserves the right to recover from the permittee any additional costs it may incur above the amount of the surety bond. The surety of the bond shall be a surety company licensed to do business in Nebraska. The bond shall be conditioned:

1. That the permittee and its successors or assigns shall indemnify, defend, and hold the county harmless from all claims, costs, damages, demands, suits, judgments, and court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, permittee's acts or omissions pursuant to its permit or this article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this article.

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2. For the maintenance of a sidewalk, street, trail, bike lane, shared-use path, or other public right-of-way, or property.
3. For the compliance with all applicable laws regarding the permitted facilities and the use of the county right-of-way or other property.
4. For the return of a sidewalk, street, trail, bike lane, shared-use path, or right-of-way or other public property to its condition prior to the permit.

P. Permittee duties.

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

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

The county shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes, laws, and permits, and may order the permittee to perform corrective work. All right-of-way or other county property disturbed by permittees' activities shall be promptly restored by the permittee at its expense to its former condition, subject to inspection by the county. If the permittee fails to make required repairs, the county may give the permittee written notice of the required repairs.

If after such notice the permittee fails to make the required repairs within

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14 days, the county may make the repairs, and the permittee shall pay the county the reasonable documented cost of such repairs. The county shall grant the permittee a ten-day extension to perform repairs if requested by the permittee within the original 14-day period. In the event of immediate threat to life, safety, or to prevent serious injury, the county may immediately undertake to restore the site and then notify the permittee and charge the permittee for all reasonable restoration costs.

4. The permittee shall install, construct, maintain and operate its small wireless facilities and associated communications facilities, utility poles, and support structures in a safe manner providing reasonable protection against injury or damage to any and all persons or property.
5. Unless otherwise specified in the permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn, and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Manual on Uniform Traffic Control Devices. The permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is filled and finished to the satisfaction of the county or as otherwise directed by the county.
6. All construction and use of the small wireless facilities and associated communication facilities, utility poles, and support structures shall comply with the permit and approved final plans and specifications. Upon completion of installation of the small wireless facilities and associated communication facilities, utility poles and support structures, the permittee shall notify the Douglas County Environmental Services Department, Planning Division within five business days of the completion of said work so that the county may conduct an inspection as provided for above.

The county will perform any such inspection within five business days from the receipt of notice from the permittee. Any construction that does not conform to the permit and approved final plans and specifications shall be reconstructed or repaired to conform to the permit and approved final plans and specification within 20 business days. If the construction and use of the small wireless facilities and associated communication facilities, utility poles, and support structures continues to fail to conform to the permit and approved final plans and specifications, the county may suspend the associated permit until such time as the work is in conformance.

7. Where applicable, permit applications shall first be approved by the County Engineer's office.

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8. The permittee agrees that it will never make a claim or bring suit against Douglas County or its agents, officers or employees for damages to its facilities or associated gear or for the expense of relocating same where such damages or relocation are caused by Douglas County or its agents, officers or employees acting in their official capacity. The right expressly understood and the undersigned further agrees never to seek to enjoin Douglas County from the exercise of that right.

Q. Location and design standards.

All small wireless facilities shall meet the following requirements:

1. The color of the personal wireless facility shall reasonably match the color of the utility pole or support structure upon which it is attached.
2. There shall be no advertising or signs on the small wireless facility, except for equipment logos, specifications, or maintenance instructions that are generally not readable from the ground or from ten feet away, and except for signage required by the FCC.
3. A small wireless facility shall be mounted at a height no more than the greater of: (A) 50 feet, including the antenna, or (B) five feet above an existing utility pole in place as of the effective date of this article and located within 500 feet in the same right-of-way.
4. Each antenna of a small wireless facility shall be no more than three cubic feet in volume. All other equipment associated with a small wireless facility, whether ground-mounted or pole-mounted, shall be no more than 28 cubic feet in volume.
5. Antennas shall be no more than 12 inches in diameter and 48 inches in height.
6. Panel antennas shall not protrude more than 18 inches outside the pole.
7. The small wireless facility and all associated equipment mounted to the outside of a pole or support structure shall be at least eight feet above grade, excluding the disconnect switch.
8. There shall be no more than eight antennas mounted on a single pole or support structure. No more than four antennas may be fixed at one elevation.
9. Cabling shall be located within conduit or inside the pole or support structure to as great a degree as possible and otherwise shall be as flush to the pole or support structure as possible. Any support arms shall use flanges or channels to conceal exterior cables and passive radiofrequency gear. Shrouds, sleeves, or 90-degree connectors shall be used to prevent exposed cables.
10. A small wireless facility shall include a disconnect switch. The disconnect switch shall be no more than 12 cubic inches in size, shall be painted the same color as the pole or support structure, and shall be mounted on the pole or support structure at a maximum of six feet above grade unless otherwise directed by the electrical inspector.

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11. So as not to impede or impair public safety or the legal use of the right-of-way by the traveling public, ground mounted equipment must be installed below grade or concealed in a ground-mounted cabinet. Ground mounted cabinets must comply with the following design standards:
 - a. Along right-of-ways with curb and gutter, in no case shall ground mounted equipment be located closer than four feet from the travelway, edge line, face of curb OR two feet from a sidewalk, bike lane, trail, or shared-use path as measured to the nearest part of the wireless support structure.
 - b. Along right-of-ways with open ditches and no curb and gutter, ground mounted equipment shall be located one foot inside the right-of-way line.
 - c. Ground mounted equipment shall not be sited in conflict with required intersection sight distance triangles.
 - d. Ground mounted equipment locations shall be located a minimum of 12 feet from driveway aprons as measured parallel to the right-of-way.
 - e. Ground mounted equipment shall be consistent with any applicable design standards of the Omaha Guidelines and Regulations for Driveway Location, Design and Construction.
 - f. Ground mounted equipment must be secured to a concrete foundation or slab with a breakaway design allowing the equipment to disconnect from the foundation in the event of collision or impact.
 - g. Screening of ground mounted equipment with a variety of plant material may be required based on the characteristics of the surrounding area.
 - h. All proposed ground mounted equipment shall be reviewed for determination of applicability of the landscape screening requirement based on the surrounding context, and where required, for appropriateness of the proposed planting plan and plant specifications.
12. In recognition of the special character of Douglas County and the impact that the right-of-way has on the character of historic districts, no new small wireless facility shall be located in the rights-of-way within any landmark or historic district or collocated on an existing wireless support structure in any landmark or historic district unless it complies with the following design standards:
 - a. All small wireless facilities shall be designed to be visually unobtrusive.
 - b. All small wireless facilities must utilize building materials, colors, textures, screening and landscaping that effectively blend the facilities within the surrounding natural setting and built environment to the greatest extent possible. The small wireless facility shall have limited exposed cabling and mounting

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- hardware.
13. The applicant shall comply with any reasonable and objective conditions published in advance and imposed non-discriminatorily by the county to accommodate the particular design or appearance of the small wireless facilities to avoid the intangible public harm of unsightly or out-of-character deployments.
 14. Placement of any required warning signs or signs related to equipment information shall be directed away from adjacent residential structures and out of direct sight lines whenever possible.
 15. Network provider must obtain a certificate of approval, in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties for small wireless facilities located in a landmark historic district or on individually designated landmarks.
 16. Concealment or camouflage options should be presented with the application to minimize the impact of the small wireless facility on any landmark or property within a landmark district. A concealed or camouflaged small wireless facility would be one that is painted, covered, disguised or concealed so that it blends into the surrounding environment, and may be painted or hidden beneath a facade, blend with the design of the area, or be disguised as a tree or piece of public art.
 17. The applicant must comply with and observe all applicable county, state, and federal historic preservation laws and requirements.
 18. A new or replacement utility pole for a small wireless facility, referred to in this subsection as a "new pole," shall be subject to the following requirements:
 - a. The new pole shall meet the generally applicable standards for such poles as established by the owner of such poles.
 - b. The new pole shall comply with applicable codes of general applicability.
 - c. The new pole shall be substantially similar in color, diameter, material, style, and arm structure of the nearest adjacent existing poles; provided that there shall be no new installations of wooden poles.
 - d. A new pole replacing an existing decorative pole shall conform to all non-discriminatory design aesthetic features of the existing decorative pole, including concealing all equipment and wiring within the replacement pole.
 - e. The height of a new pole shall not exceed the greater of (A) five feet above the tallest existing utility pole in place as of the effective date of this article located within 500 feet of the new pole in the same right-of-way, or (B) 50 feet above ground level.
 - f. The diameter of the new pole shall be no more than 14 inches; provided that the bottom 66 inches of the new pole may be no more than 18 inches in diameter.

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- g. The base of the new pole shall minimize flat surfaces, so as to prevent accumulation of trash.
- h. In accordance with existing standards for street light poles, a new pole shall be located no closer than 150 feet from an existing street light pole on a Principal Arterial, Minor Arterial, or Collector street, and no closer than 100 feet from an existing street light pole on a local or residential street. This requirement shall not prevent the replacement of light poles in place as of the effective date of this article that do not meet this spacing requirement. This requirement shall not apply when it prevents a wireless provider from serving a location or otherwise materially inhibits the provision of wireless services, provided sufficient information is submitted with the application that demonstrates the wireless provider is materially inhibited in the provision of service. "Materially inhibits" includes but is not limited to, when the standard results in a gap in coverage or capacity, prevents the introduction of new services or the implementation of service improvements, or prevents the densification of the wireless provider's network.
- i. A new pole shall not be located within seven feet of an electrical conductor unless the applicant obtains the written consent of the entity that owns or manages the electrical conductor.

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

1. Such items shall not interfere with the safe operation of traffic control equipment and of the right-of-way.
2. Such items shall not materially interfere with sight lines or clear zones for air or land transportation or pedestrians.
3. Such items shall not obstruct or hinder the usual travel or public safety on right- of-way, or obstruct the legal use of right-of-way by utilities or the safe operation of their systems or provision of service.
4. Such items shall not violate or materially interfere with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement.
5. Such items shall comply with applicable codes of general applicability.

R. Make-ready work.

In its application, the applicant shall identify any make-ready work proposed to

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be performed by the county. Within 120 days after receipt of a completed application, the county shall provide a preliminary good faith estimate of the cost of such make-ready work to be paid by the applicant to the county. The applicant shall pay to the county the amount of the estimated cost. Make-ready work to be performed by the county shall be completed within 90 days after written acceptance of the good faith estimate by the applicant. Upon the county's completion of the make-ready work, the applicant shall pay the county, or the county shall refund to the applicant, as the case may be, the difference between the cost estimate paid and the actual cost. Total fees shall not exceed actual costs of the make-ready work. Alternatively, the county and the applicant may agree that the applicant or a party other than the county may perform the make-ready work, subject to the county's approval before and after the work.

The county may require replacement of the utility pole if it determines that the collocation would make the utility pole structurally unsound. The person owning the utility pole shall not require more make-ready work than required to meet applicable codes and industry standards. This requirement shall not prevent the replacement of light poles that are currently constructed within a clear zone at the time of the effective date of this article.

S. Assignment.

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

1. The assignee's name, address, telephone number, and e-mail address, including emergency contact information.
2. Exact location of all small wireless facilities and associated equipment or structures being assigned.
3. All conditions of the original permit and provisions of this regulation shall apply to the assignee.

5.11 Supplemental Use Regulations: Accessory Uses

A. Home Occupations: Home Occupation I (MAJOR): These type home occupations require a special use permit and include any of the following;

1. Any business or use with a part time or full time employees not residing on the premises
2. Any business which involves customer visits to the location
3. Not located in the residence (such as a detached structure)

Examples may include art/craft making, seamstress services, professional

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offices (real estate/insurance/medical), multi-level marketing, vending services, service businesses (contracting/janitorial/mechanical), instruction (music), consulting, wholesale/catalogue sales, personal service (beauty/barber/massage/tattoo), landscaping business, or other similar uses with on-site sales and services or employees traveling to and from the premises. Uses not allowed include welding, vehicle body repair, or dismantling and rebuilding of vehicles.

- B. Home Occupation II (MINOR): These type home occupations do not require a special use permit and include any business or use in which an office in the home, including such things as a home phone, computer, etc. are used for telecommuting and/or in deriving other income or sales. Such occupations shall have no customers or part-time or full-time non-resident employees coming to or from the residence as part of the business operation. This includes business offices for services such as construction, repair and cosmetic services/sales rendered at other locations, internet businesses, and other similar uses.
 - 1. Home occupations are subject to the following conditions:
 - a. External Effects: No noise, odors, bright lights, storage or other external effects attributable to the home occupation are allowed.
 - b. Service Traffic: Deliveries or service by commercial vehicles or trucks over ten tons licensed weight is prohibited.
 - c. There shall be no outside operation, storage, or display of materials or products.
 - d. One sign advertising the business is allowed, attached to the residence. Such sign shall not exceed three square feet in total area. Freestanding signs are not permitted.
 - e. Not more than one-half of the area of one floor level of the dwelling or accessory building shall be used for such business, including the storage of materials or products.

5.12 Permitted Accessory Uses: Residential Uses
Residential uses may include the following accessory uses, activities, and structures on the same lot.

- A. Private garages and parking for the residential use
- B. Recreational activities and uses by residents.
- C. Home occupations, subject to Article 5.10 above.
- D. Residential convenience services for multiple-family uses or mobile home parks.
- E. Private Gardens.

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5.13 Permitted Accessory Uses: Other Use Types

Other use types may include the following accessory uses, activities, and structures on the same lot:

- A. Parking for the principal use.
- B. Manufacturing or fabrication of products made for sale in a principal commercial use, provided that such manufacturing is totally contained within the structure housing the principal use.
- C. Services operated for the sole benefit of employees of the principal use.

5.14 Permitted Accessory Uses: Agricultural Use Types

- A. Landscape businesses and roadside/onsite farm stands, subject to the regulations set forth in Article 5.02.
 - 1. Landscape businesses may grow/produce plant materials (trees, shrubs, etc.) on site for use in their landscape projects but are not allowed to sell these items directly to a consumer (i.e. retails sales) that they are not providing landscaping services to.
- B. Other uses and activities necessarily and customarily associated with the purpose and functions of agricultural uses.

5.15 Supplemental Use Regulations: Outdoor Storage

Outdoor storage is prohibited in all zoning districts except the GI General Industrial zoning district, except as provided below:

- A. Agricultural Use Types: Outdoor storage is permitted only where incidental to agricultural uses.
- B. Civic Use Types: Outdoor storage is permitted only where incidental to maintenance facilities.
- C. Commercial Use Types
 - 1. Outdoor storage is permitted only where incidental to Agricultural Sales and Service; Automotive Rentals and Sales; Construction Sales and Service; Equipment Rental/Sales; Garden Centers; Landscaping Businesses; Stables, Kennels; and Surplus Sales.
 - 2. Outdoor storage is permitted where incidental to Body Repair, provided that such storage is completely screened at property lines by an opaque barrier, as set forth in Article 9. This provision shall apply to any Body

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Repair use established after the original effective date of this Regulation.

D. Industrial and Miscellaneous Use Types:

1. Outdoor storage is permitted where it is incidental to Light Industry; General Industry; Heavy Industry; Garden Centers; Landscaping Businesses; Resource Extraction; Salvage Services; Warehousing; Landfills, Composting; and Construction Yards. Any such outdoor storage is subject to the provisions in Article 9.
2. Composting must meet aeration and particle size requirements and be contained in bins or holding areas. Size shall be below the amount established by the Nebraska Department of Energy and Environment (NDEE) for compost operations needing a permit from the NDEE.

5.16 Supplemental Use Regulations: Temporary Uses

A. Purpose:

These provisions are intended to permit occasional, temporary uses and activities, when consistent with the objectives of the zoning regulation and compatible with surrounding uses. They are further intended to prevent temporary uses from assuming the character of permanent uses.

B. Temporary Use Types

The following temporary uses are permitted, subject to the regulations contained within these sections:

1. Model homes or apartments, if contained within the development to which they pertain.
2. Development sales offices. Such offices may remain in place until 90% of the lots or units within the development are sold and may not be located within a mobile home or manufactured home/structure.
3. Public assemblies, displays, and exhibits.
4. Commercial circuses, carnivals, fairs, festivals, or other transient events.
5. Outdoor art shows and exhibits.
6. Christmas tree or other holiday-related merchandise sales lots, provided that such facilities are not located in a residential zoning district.
7. Construction site offices, if located on the construction site itself.
8. Additional temporary uses that the Zoning Coordinator determines to be

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similar to the previously described uses in this Article.

C. Required Conditions of All Temporary Uses:

1. Each site shall be left free of debris, litter, or other evidence of the use upon its completion or removal.
2. The Zoning Coordinator may establish other conditions to ensure compatibility with surrounding land uses.

D. Permit Application and Issuance:

1. An application to conduct a temporary use shall be made to the Zoning Coordinator and shall include at a minimum a description of the proposed use; a diagram of its location; information regarding hours and duration of operation; and other information necessary to evaluate the application.
2. The Zoning Coordinator may authorize a temporary use only if:
 - a. The use will not impair the normal operation of a present or future permanent use on the site.
 - b. The use will be compatible with surrounding uses and will not adversely affect the public health, safety, and welfare.
3. The duration of the permit shall be explicitly stated on the permit.
4. Decisions of the Zoning Coordinator may be appealed to the Planning Commission and then forwarded on to the County Board.

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