

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 16, 2020 AGENDA

Subject:	Type:	Submitted By:
SMALL WIRELESS FACILITIES	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	CALE BRODERSEN ASSISTANT PLANNER

SYNOPSIS

This request to amend the La Vista Municipal Code introduces a new chapter (Chapter 120) which will regulate the placement and permitting of Small Wireless Facilities in public right(s)-of-way within La Vista's planning jurisdiction. This request will bring La Vista into compliance with Nebraska Legislative Bill 184, also known as the Small Wireless Facilities Deployment Act (LB184) which was signed into law on May 21, 2019.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval.

BACKGROUND

Nebraska Legislative Bill 184 states that the deployment of small wireless facilities is a matter of statewide concern and public policy, and the bill provides access for wireless telecommunication carriers to use municipal right(s)-of-way for deployment of small wireless facilities on existing or newly installed poles. LB184 provides for uniform application review and permitting processes for municipalities within the State of Nebraska and requires compliance with FCC guidelines.

Small wireless facilities, also known as “small cells” are low-powered cellular radio access nodes involving antennas, fiber, electricity, and equipment cabinets that have a limited range in comparison with traditional cell towers, but are used to increase network capacity in specific areas. They are being deployed across the country to improve 4G and 5G access, and some have been deployed in both Omaha and Lincoln.

After being signed into law on May 21, 2019, LB184 went into effect on September 1, 2019, and this ordinance is required to bring La Vista into compliance. The proposed ordinance was modeled after those of surrounding communities such as the City of Papillion and the City of Omaha. City staff has worked with the City Attorney over the past few months to ensure that this ordinance is appropriate for La Vista and in compliance with State Statute. Attached is the ordinance containing the proposed language for La Vista Municipal Code Chapter 120.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND THE LA VISTA MUNICIPAL CODE BY ADDING A NEW CHAPTER 120 REGARDING TELECOMMUNICATIONS SMALL WIRELESS FACILITIES; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA that the La Vista Municipal Code is amended by adding a new Chapter 120 entitled "Telecommunications", and a new Article I thereunder entitled "Small Wireless Facilities", consisting of Sections 120.001 through 120.013, reading as follows:

CHAPTER 120: TELECOMMUNICATIONS

ARTICLE I. *Small Wireless Facilities*

§ 120.001. FINDINGS AND PURPOSE.

- A. The City Council finds that it is necessary to specify requirements for the orderly, safe, and aesthetic deployment of small wireless facilities by telecommunications companies in the City.
- B. The City owns and maintains public rights of way principally for use by the City and its residents for public purposes.
- C. City rights of way are a finite resource and are subject to requests for use by others, including companies seeking use of rights of way in connection with small wireless facilities, which uses or activities can jeopardize or interfere with public health, safety, welfare, or use of rights of way by the City or its residents, and adversely affect aesthetics within the City.
- D. It is necessary to regulate such uses of rights of way in the City to ensure they are conducted in a fair, safe, and orderly manner that does not jeopardize or interfere with public health, safety, welfare, or uses of rights of way by the City or its residents, and that minimizes potential adverse impacts on aesthetics within the City.

The City, in the interests of protecting public health, safety, and welfare, determines that it is appropriate to adopt rules and regulations governing small wireless facilities on or within public rights of way. The City through zoning also has authority to regulate uses of properties other than public rights of way in connection with small wireless facilities.

§ 120.002. DEFINITIONS.

For the purposes of this Article, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section or Neb. Rev. Stat. Section 86-1201 et seq., known as the Small Wireless Facilities Deployment Act. The purpose of these provisions is to promote consistency and precision in the interpretation of this Article. The meanings and construction of words as set forth shall apply throughout this Article, unless where modified in a specific section or where the context of such words or phrases clearly indicates a different meaning or construction.

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

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

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

City and are generally applicable in the City.

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

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

AUTHORITY POLE – A utility pole owned, managed, or operated by or on behalf of an authority.

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

CANTENNA -- means a cylindrical shaped antenna installed at the top of a pole.

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

COMMUNICATIONS FACILITY -- Any set of equipment and network components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), 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 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.

COMMUNICATIONS NETWORK -- A network used to provide communications service.

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.

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.

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

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

FCC -- The Federal Communications Commission.

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

GROUND MOUNTED EQUIPMENT – Equipment installed, affixed, placed, or situated at or below grade level, including without limitation equipment located at or below grade adjacent to sidewalks, drive aisles or streets, and is distinct from equipment mounted on existing above-ground infrastructure having a primary purpose unrelated to small wireless facilities, such as utility poles.

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.

LAW -- Applicable federal, state, or local laws, rules or regulations as adopted or amended from time to time, including without limitation, applicable provisions of Neb. Rev. Stat. Section 86-1201 et seq., known as the Small Wireless Facilities Deployment Act.

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

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

ORDINARY MAINTENANCE AND REPAIR -- Routine maintenance and/or repairs that maintain functional capacity, aesthetic and structural integrity of a facility and do not increase the usefulness or life of the facility..

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

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

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

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

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

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

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 § 39-1302, the National System of Interstate and Defense Highways, or a private easement.

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.

SIGHT TRIANGLE ZONE -- An area at a street intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two-and-a-half (2 ½) feet and ten (10) feet

above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets, sixty (60) feet in each direction along the centerline of the streets. At the intersection of major or other arterial streets, the sixty (60) foot distance shall be increased to ninety (90) feet for each arterial leg of the intersection.

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

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

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

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

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

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

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

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

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

WIRELESS SERVICES PROVIDER -- A person who provides wireless services.

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

§ 120.003. APPLICABILITY.

This article shall apply to all deployments of small wireless facilities on rights of way within the City and its two mile extraterritorial jurisdiction, as amended or annexed from time to time, except as specifically excluded in this section or in this article. With respect to deployments on rights of way which are owned by another jurisdiction, the city shall coordinate its regulation under this article with such jurisdiction, by agreement or otherwise, so that only one of the jurisdictions regulates the same. This article shall not apply to any facility that was in existence and authorized by an agreement with the City as of the effective date of this article. Notwithstanding this section, the shot clock for an application shall be governed by this article or by an existing agreement, whichever provides for a shorter shot clock. Notwithstanding this section, application fees and yearly rates shall be governed by this article or by an existing agreement, whichever provides for smaller fees or rates. Small wireless facilities shall be governed by this article, and not by other lease requirements of the City or this Code. This article shall not apply to the design, engineering, construction, installation, or operation of any small wireless facility located in the interior structure or upon the site of any college or university campus, stadium, or athletic facility not owned or controlled by the City, other than to comply with applicable codes, laws, or as otherwise agreed by the person or entity owning or controlling the college or university campus, stadium, or athletic facility. For an application submitted to the State of Nebraska regarding a location within right of way or other property owned or controlled by the State, to the extent that the State seeks a recommendation from the City regarding such application, the City shall apply the location and design standards of section 120.011. The applicant for a location on such State right of way or other property shall provide to the City a copy of the application submitted to the State. City shall not require an application, permit, or other approval or charge fees or rates for ordinary maintenance of small wireless facilities, replacement of small wireless facilities with small wireless facilities that are substantially similar in weight or windage or the same size or smaller, or for the installation, placement, maintenance, operation or replacement of microwireless facilities that are strung on cables between existing utility poles in compliance with the National Electrical Safety Code. Except as otherwise provided in this Article, City requires a permit for all other work, and for any work that requires excavation or closing of sidewalks or any vehicular lanes within the right of way.

§ 120.004. PERMIT REQUIRED.

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

construct, install, replace, maintain, or operate a new utility pole or support structure to which will be attached or associated a small wireless facility, unless such person shall have previously obtained a permit under this article.

§ 120.005. APPLICATION.

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

- (1) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the applicant.
- (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the application.
- (3) A description of the proposed work and the purposes and intent of the proposed small wireless facility.
- (4) If applicable, written authorization from the owner of the utility pole or support structure on which the small wireless facility will be placed or attached, if not the City. For a utility pole or support structure owned or controlled by the Omaha Public Power District or other owner, the applicant shall provide proof of approval of the specific plans by that District or owner.
- (5) 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.
- (6) To the extent the proposed small wireless facility involves collocation on a utility pole or support structure, a structural report performed by a duly licensed engineer evidencing that the pole or support structure will structurally support the collocation (or proposed modifications to the pole or support structure to meet structural requirements) in accordance with applicable codes.
- (7) For any new above ground antenna or other equipment, a conceptual rendering of the said equipment, including accurate visual depictions and locations, if not included in the construction drawings.
- (8) A full description of any proposed make-ready work to be performed in preparation for the proposed installation and use of the small wireless facility, associated equipment and utility pole or support structure.
- (9) The application fee as required by this article.
- (10) Bond and certificate of insurance as required by this article.

(11) The application shall include:

- (a) Language providing for the indemnification of the City by the applicant as required by this article; and
- (b) An attestation by the applicant that the small wireless facility shall be operational for use by a wireless services provider within nine 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 a period of up to nine months, equal to the period of the delay.
- (c) The applicant's signature on and submittal of the application shall constitute agreement to subsections (a) and (b) above.

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

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. If an applicant applies to construct or collocate several small wireless facilities within the jurisdiction of the City, the City shall:

- (1) Allow the applicant, at the applicant's discretion, to file a single set of documents that apply to all of the applicant's small wireless facilities; and
- (2) Render a decision regarding all of the applicant's small wireless facilities in a single administrative proceeding.

C. 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 City as if it were an initial application. This subsection C does not apply, and no permit, application, or fee will be required, with respect 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, unless excavation or closing of sidewalks or any vehicular lanes within the right of way is required.

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

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

- (a) Ninety days, plus an additional ten business days if requested in

writing by the City prior to the expiration of the ninety days, plus,

- (b) Such additional number of days of the tolling period, if any, pursuant to subsection (D)(2) below.
- (2) Unless a written agreement between the applicant and the City provides otherwise, the tolling period for an application, if any, is as set forth below:
 - (a) If the City 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 on which the applicant submits all the documents and information identified by the City to render the application complete.
 - (b) Subsequent findings of incompleteness shall further toll the shot clock from the time the City sends written notice of incompleteness until the time the applicant provides the missing information.
 - (c) If the applicant submits new or additional documents or information that include material changes not otherwise required by the City, a new application and application fee shall be submitted, which will restart the shot clock at zero
- (3) The shot clock deadline for an application is determined by counting forward, beginning on the day after the date when the application or any missing or additional information or documents, as the case may be, is submitted, by the number of calendar days of the shot clock period identified pursuant to this subsection (D); provided, that if the deadline calculated in this manner falls on a weekend or holiday, the deadline shall be the next business day after such date. The term "business day" means any day that is not a weekend day or holiday.

- E. Permit issuance. Approval of an application authorizes the permittee to deploy, maintain and operate the small wireless facilities and any associated utility pole covered by the permit for a period of five years in accordance with this article, subject to applicable relocation requirements and the permittee's right to terminate at any time. At the end of each such term, such permit shall be considered automatically renewed for an equivalent duration so long as the permittee is in compliance with applicable requirements. Application review and permit issuance shall be conducted administratively by the City Administrator or the City Administrator's designee.

§ 120.006. FEES & COSTS.

A. Application fees.

- (1) An application for a permit under this article for the collocation of a small wireless facility on an existing utility pole or support structure shall be accompanied by an application fee in the amount of \$500.00 for up to five small wireless facilities on the same application.

(2) An application for a permit for a new, modified, or replacement utility pole or support structure intended to support one or more small wireless facilities, and for one small wireless facility to be placed on such pole or structure, shall be accompanied by an additional application fee of \$250.00.

B. Annual fees.

- (1) A permittee who is charged City occupation taxes under Neb. Rev. Stat. §86-704 shall pay such occupation taxes and shall not be charged any additional amount for use of the right of way.
- (2) A permittee who does not pay the City occupation taxes under Neb. Rev. Stat. Section §86-704 shall pay to the City an annual rate of \$250.00 for each small wireless facility each year, or any applicable occupation taxes from time to time specified by City Ordinance under Neb. Rev. Stat. §16-205.
- (3) For collocations of small wireless facilities on City poles in City right of way, permittee will pay City \$20.00 per pole per year.
- (4) The annual amounts described in subsection 120.006B(2) or B(3) above shall be determined on a calendar year basis and paid on or before January 1 of the calendar year to which they relate.

C. Costs. In addition to fees specified in this §120.006 above, applicant or permittee shall be liable for and pay all costs and expenses specified by §§ 120.001 through 120.013, or otherwise incurred in connection with facilities, poles, equipment, or actions of applicant or permittee, including without limitation, the obligation of the applicant or permittee to reimburse to the City the actual cost of repair as provided in § 120.010.

§ 120.007. INTERFACE, REMOVAL, AND ABANDONMENT.

A. In the event that any facility of a permittee on City right of way or City property obstructs or hinders travel or public safety or obstructs or interferes with the legal use of such right of way or property by the City, utilities or other authorized users, as determined at the sole discretion of the City Engineer or any designee of the City Engineer ("City Engineer"), the City may provide written notice to the permittee of such interference, obstruction, or hindrance and of the need to resolve such interference, obstruction, or hindrance. Not in limitation of the immediately preceding sentence, in the event that any such facility of the permittee causes any radiofrequency interference to any City facilities or other uses of City right of way or City property, the City may notify the permittee in writing of such interference and the need to resolve such interference. Upon service of any notice under this subsection, the permittee shall remedy such interference, obstruction, or hindrance within 90 days or, in the case of an emergency, within such shorter time period as directed by the City. If such interference, obstruction, or hindrance is not resolved in a timely manner, the permittee shall, at its own expense, remove its facilities from that location and restore the location to a condition equal to or better than the condition before construction or installation of the facilities. In such case, the permittee may apply for the relocation of similar facilities at another location satisfactory to the City Engineer, without payment of an application fee.

- B. Within 90 days following written notice from the City, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its facilities, whenever the City has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any City improvement in, under or upon the public right of way. The permittee shall be responsible to the City for any damages or penalties the City may incur as a result of the permittee's failure to remove or relocate the facilities as required in this subsection.
- C. The City retains the right and privilege to cut or move any facility of the permittee located within the public right of way or on City property, as the City may determine in its sole discretion to be necessary, appropriate or useful in response to any public emergency, and the permittee will pay the cost. If circumstances permit, the City shall notify the permittee and give the permittee an opportunity to move its own facilities prior to cutting or removing the facilities. In all cases the City shall notify the permittee after cutting or removing the facilities as promptly as reasonably possible.
- D. The permittee may cease using its facilities at a location. The permittee shall notify the City of its intent to cease using any facility at the time the decision is made, but in no case shall such notification be made later than 30 days prior to the date the use ceases. The permittee shall, within 30 days of such notice, remove its facilities at the permittee's own expense, unless the City determines and states in writing, in its sole discretion, that any part of the facilities may be abandoned in place. The permittee shall remain solely responsible and liable for all of its facilities until they are removed from the public right of way unless the City agrees in writing to take ownership of the abandoned facilities. For the purpose of this subsection, abandonment of facilities and cancellation of the related permit shall be deemed to have occurred after such facilities are not used for a period of 90 days.
- E. If the permittee fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its facilities or remove any of its abandoned or unused facilities or otherwise take any action as required in this section, the City or its contractor may do so. In such case, the permittee shall pay all costs related to such work.

§ 120.008. INDEMNIFICATION.

In submitting an application and maintaining and operating its facilities, the permittee agrees to indemnify, defend and hold harmless the City, and all officers, officials, employees, and agents of the City, and each of them, from and against all claims, causes of action, costs, damages, demands, suits, judgments, and expenses, including without limitation court costs, costs of defense, and attorney fees, arising out of or resulting from, in whole or in part, any acts or omissions of permittee or any owner, director, officer, manager, partner, employee, contractor, agent, successor or assign of permittee (each referred to as "Affiliated Party") in connection with a permit, this article, use of City rights of way, or the installation, construction, operation, maintenance, replacement, modification, or repair of facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this article. Execution and submission of an application by the applicant shall be deemed to constitute an agreement to the provisions of this section.

§ 120.009. INSURANCE.

- A. Upon and after application, the permittee, at permittee's cost and expense, shall obtain and maintain during the term of the permit and completion of all work on City property, the type and amount of insurance as specified by the City Engineer in accordance with City policies at the time an application is submitted, and at a minimum including the following: (1) commercial general liability ("CGL") with a limit of \$1,000,000 per occurrence for bodily injury (including death) and property damage liability and \$5,000,000 general aggregate including products/completed operations and explosion, collapse and underground hazards, and completed operations and waiver of subrogation in favor of City, (2) commercial automobile liability insurance with limits of \$1,000,000 Combined Single Limit ("CSL") each accident for bodily injury and property damage covering all owned, hired, and non-owned motor vehicles, (3) workers' compensation insurance in compliance with the statutory requirements of the state(s) of operation and employer's liability with a limit of \$500,000, each accident/disease/policy limit. On all such policies and certificates of insurance other than workers compensation and employer's liability coverages, permittee shall cause City to be included as an additional insured on such coverages on a primary and non-contributory basis for the duration of the permit and completion of all work on City property, and shall waive subrogation of claims against City as an additional insured. All such policies and certificates of insurance shall be issued by companies authorized to do business in the State of Nebraska. A certificate of insurance shall be filed with the City Clerk's office prior to commencement of any construction or installation or other work or activity under a permit.
- B. Upon and after application, the permittee of a permit located on right of way or other City property shall provide and maintain in effect a bond with a surety, in favor of the City, in the minimum amount of \$50,000, to cover all permitted sites of the permittee. The exact amount of the surety bond is to be determined by the City Engineer based upon factors, including without limitation, the number of locations and volume of work. 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 harmless the City and City officers, officials, employees, and agents as set forth in 120.008.
 - (2) For the maintenance of the sidewalk or public right of way.
 - (3) For the compliance with the permit, this article, and all applicable laws regarding the permitted facilities and the use of the City right of way or other property.
 - (4) For the return of the sidewalk, street, right of way or other public property to equal or better condition as existing prior to commencement of any work pursuant to the permit.

§ 120.010. PERMITTEE DUTIES.

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

the following duties:

- A. Small wireless facilities and associated communications facilities, utility poles and support structures shall be located, installed and maintained so that they do not endanger the lives, health or safety of persons, or interfere with any public improvements the City or other governmental entities (including any traffic control devices or signs, gas, electric, storm water, sanitary sewer or water utilities or enterprises) now or hereafter have in place or may deem proper to make. The location, installation or maintenance of the small wireless facility and associated communications facilities, utility pole and support structure shall not hinder or obstruct the usual travel or public safety on right of way, or obstruct the legal use of right of way by utilities or the safe operation of their systems or provision of service.
- B. All construction, excavation, maintenance and repair work done by the permittee shall be done in a safe, workmanlike and expeditious manner which minimizes inconvenience and danger to the City, the general public and individuals. All such construction, excavation, maintenance and repair work done by the permittee shall comply with all applicable codes and laws. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes, laws, and permits, and may order the permittee to perform corrective work. All right of way or other City property disturbed by permittees' activities shall be promptly restored by the permittee at its expense to its former condition, subject to inspection by the City. If the permittee fails to make or perform required repairs, correction, or restoration, the City may give the permittee written notice of the required work. If after such notice the permittee fails to do the required work within fourteen days, the City may do the work, and permittee shall pay the City the reasonable cost of such work. The City shall grant the permittee a ten day extension to perform work if requested by the permittee within the original fourteen day period. In the event of immediate threat to life, safety, or to prevent serious injury, the City may immediately undertake to do the work and then notify the permittee and charge the permittee for all applicable costs.
- C. All small wireless facilities and associated communications facilities, utility poles, support structures, improvements, and work shall be installed, constructed, maintained, operated, modified, repaired, replaced, and carried out in a safe, workmanlike, and expeditious manner, in accordance with all applicable law, and providing reasonable protection against injury or damage to any and all persons or property.
- D. Unless otherwise specified in the permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control and other devices, signs, lights, and precautions to protect, warn and guide the public (vehicular and pedestrian) through the work zone or as otherwise appropriate in connection with permitted work or improvements. The manner and use of any traffic control devices, signs, lights, or precautions shall be described within a traffic control plan in accordance with the Manual on Uniform Traffic Control Devices. The permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is filled and finished to the satisfaction of the City, or as otherwise directed by the City.
- E. 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 Planning Department within three (3) business days of the completion of said work so that the City may conduct an inspection as provided for above. Any construction that does not conform to the permit and approved final plans and specifications, or applicable law, shall be reconstructed or repaired to conform to such requirements within five (5) business days. If permittee fails to satisfy such requirements within five (5) business days, the City may revoke the associated permit.

F. If a new utility pole or support structure is to be built or installed for the sole or primary purpose of supporting a small wireless facility, such pole or structure shall comply with all applicable codes and law.

§ 120.011. LOCATION AND AESTHETIC STANDARDS.

The City desires to promote aesthetically acceptable and area conforming wireless facilities. Wireless facilities deployed in the City shall use equipment and techniques that minimize visibility and perceptibility of small wireless facilities to the greatest extent feasible, including without limitation, using the smallest and least intrusive equipment, shapes, colors, placements, and other camouflaging techniques available with respect to small wireless facilities. All facilities in the public right of way must comply with all applicable provisions in this section.

A. All small wireless facilities shall meet the following requirements:

- (1) Concealment elements must be incorporated into the proposed design of the small wireless facility installation and must include approved camouflaging or shrouding techniques.
- (2) Antennas must be top-mounted and concealed within a radome (a structural, weatherproof enclosure that protects an antenna and is constructed of material that minimally attenuates the signal transmitted/received by such antenna) or otherwise concealed to the greatest extent technically feasible. Cable connections, antenna mounts and other hardware must also be concealed. The radome or other concealment elements must be non-reflective and painted or otherwise colored the same as the existing support structure;
- (3) The antenna 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, together, shall be no more than twenty-eight cubic feet in volume. The antenna and related equipment must be the smallest size technically feasible with substantially the same performance as larger alternatives;
- (4) The color of the small wireless facility shall be the same as the color of the utility pole or support structure upon which it is attached;
- (5) 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;

- (6) 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 five hundred feet in the same right of way;
- (7) Cantennas shall be no more than 12 inches in diameter and 48 inches in height;
- (8) If the antenna of the small wireless facility is side-mounted, it shall not protrude more than eighteen inches beyond the side of the pole, and shall not extend beyond the height of the pole;
- (9) Collocations between wireless service providers on the same support structure is required wherever technically feasible. If an applicant proposes not to collocate in areas where options are or appear to be available, the applicant must document why the collocation is infeasible;
- (10) Cabling shall be located within conduit or inside the pole or support structure to as great a degree as possible, and otherwise shall be as flush to the pole or support structure as possible. Any support arms shall use flanges or channels to conceal exterior cables and passive radiofrequency gear. Shrouds, sleeves, or ninety degree connectors shall be used to prevent exposed cables;
- (11) When facilities are permitted to be pole-mounted, facilities other than the antenna(s), electric meter and disconnect switch must be concealed within an equipment shroud. The facilities must be installed at a height that presents the least aesthetic impact, but in no event lower than 20 feet above ground level, except for the disconnect switch. The equipment shroud must be non-reflective and painted, wrapped or otherwise colored to match the support structure. Shrouds must be mounted flush to the support where feasible. Standoff mounts must provide the minimum separation distance from the support structure necessary for feasibility;
- (12) A small wireless facility shall include a disconnect switch. The disconnect switch shall be no more than twelve 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 City Chief Building Official;
- (13) Unless otherwise required by the City, or for compliance with FAA or FCC regulations, small wireless facilities shall not include any lights or lighting;
- (14) City may request technically feasible alternative locations for the collocation of small wireless facilities pursuant to Section 86-1237(5)(d) of the Act, and the applicant will cooperate with the City to address the City's request. If an applicant reasonably believes an alternative location is infeasible, it must document to the City the basis for the applicant's belief;
- (15) By publication of this Chapter, all Applicants are notified that the City desires to reserve space on Authority Poles in the City for such uses or purposes from time to time determined in the sole discretion of the City Administrator or any designee of the City Administrator. Not in limitation of the foregoing, all wireless

facilities located or collocated on a City-owned pole on which a decorative banner may be placed, or located or collocated on any other pole in City right of way on which City has the right to place a decorative banner, must be placed above the banner or place designated by the City for a banner for that specific pole;

- (16) All wireless facilities located or collocated on City-owned or other poles in right of way must be placed on the backside of the pole, facing away from the nearest street;
- (17) If decorative street lights and poles have been installed in a neighborhood or district, small wireless facilities shall only be installed at intersections as combination poles designed for mounting street lights and small wireless facilities and matching the decorative street lights and poles. The purpose of this is to eliminate the removal of decorative street lights mid-block and to preserve the intended decorative aesthetics of the neighborhood or district;
- (18) If wireless equipment for both 4g and 5g technology is to be collocated on the same pole, the City requires a cantenna for the 4g equipment where technically feasible, and a maximum of 3 antennas per pole aside from the cantenna;
- (19) Small wireless facilities must not be installed or strung up using cables or wires between poles or structures when technically feasible alternatives exist, such as collocating to a pole or mounting on the ground;
- (20) Small wireless facilities shall not be allowed on traffic signal systems; and
- (21) Such other requirements as established and published by the City Administrator from time to time, which other requirements shall be effective with respect to applications filed on or after the publication date. For this purpose, publication shall mean posting by the City Administrator or the City Administrator's designee in three public places in the City, or publication by such other method as specified by the City Administrator or City Administrator's designee from time to time.

B. A new or replacement utility pole for a small wireless facility, referred to in this subsection as a "new pole," shall be subject to the following requirements:

- (1) The new pole shall meet the generally applicable standards for such poles as established by the owner of such poles or applicable law.
- (2) The new pole shall comply with applicable codes of general applicability.
- (3) The new pole shall be substantially similar in color, diameter, material, style, design characteristics, and arm structure of the nearest adjacent existing poles; provided, that there shall be no new installations of wooden poles.
- (4) A new decorative pole replacing an existing decorative pole shall conform to all applicable design aesthetic features of the decorative pole being replaced, including concealing all equipment and wiring within the replacement pole.

- (5) If the existing street light poles are not capable of accepting new equipment, the provider must remove and replace those poles with a combination pole designed for mounting street lights and small wireless facilities.
- (6) 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 five hundred feet of the new pole in the same right of way, or (B) fifty feet above ground level.
- (7) The diameter of the new pole shall be no more than fourteen inches; provided, that the bottom sixty-six inches of the new pole may be no more than eighteen inches in diameter.
- (8) The new pole shall be in alignment with existing trees, utility poles, and streetlights.
- (9) The new pole shall be an equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
- (10) The new pole shall be placed with appropriate clearance from existing utilities, to accommodate the passage of traffic in the right of way and any work done on or around the facilities.
- (11) The new pole shall be placed outside of the required sight triangle zone, where pedestrian trails, sidewalks, and streets intersect(s).
- (12) The new pole shall be placed so as not to be located along the frontage of a Historic District.
- (13) The new pole shall not be placed within 50 feet of the apron of a fire station or other emergency service responder facility.
- (14) In accordance with existing standards for street light poles, and provided it does not result in an effective prohibition of service, a new pole shall be located no closer than one hundred fifty feet from an existing street light pole on an arterial or collector street, and no closer than one hundred feet from an existing street light pole on a local or residential street. This requirement shall not prevent the replacement of light poles in place as of the effective date of this articles that do not meet this spacing requirement.
- (15) 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.
- (16) New or existing poles, support structures, or other structures, equipment, or facilities shall not interfere with, obstruct, or obstruct access to or use of:
 - a. Any existing above ground or underground right-of-way user facilities, or public facilities
 - b. Any public infrastructure for traffic control, streetlight or public

transportation purposes, including without limitation any curb control sign, vehicular traffic sign or signal, pedestrian traffic sign or signal, or barricade reflectors

- c. Any public transportation vehicles, shelters, street furniture, or other improvements at any public transportation stop (including, without limitation, bus stops, streetcar stops, and bike sharing stations)
- d. Fire hydrants or fire escapes
- e. Any doors, gates, sidewalk doors, passage doors, stoops, or other ingress and egress points to any building appurtenant to the right-of-way

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

- (1) So as not to impede or impair public safety or the legal use of the right of way by the traveling public, ground mounted equipment must be installed below grade, or if installation below grade is not technically feasible, concealed in a ground-mounted cabinet. If technically feasible, new ground-mounted small wireless facilities must be collocated in an existing cabinet. Ground mounted cabinets must comply with the following design standards:
 - a. In urban sections with curb and gutter, ground mounted equipment shall not be located closer than four (4) feet from the pavement or face of curb, and shall not be located closer than two (2) feet from a sidewalk, bike lane, or shared-use path as measured to the nearest part of the equipment.
 - b. In rural sections with open ditches, ground mounted equipment shall be located at least one (1) foot inside the right of way line.
 - c. Ground mounted equipment shall be placed outside of all sight triangle zone(s).
 - d. Ground mounted equipment locations shall be located a minimum of twelve (12) feet from driveway aprons as measured parallel to the right of way or as determined by the City Engineer in a field sight distance inspection.
 - e. Ground mounted equipment shall be consistent with any applicable design standards of the Omaha Guidelines and Regulations for Driveway Location, Design and Construction, most current edition at the time an application is submitted.
 - 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. Not in limitation of immediately preceding subsection "g," all proposed ground mounted equipment shall comply with applicable design, landscape, screening, or camouflaging requirements in effect when an application is submitted, if any, including without limitation, any such requirements based on surrounding context, colors, materials, locations, plants, and planting plan.

- (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 design, landscape, screening, or camouflaging requirements in effect when an application is submitted, if any, including without limitation, any such requirements based on surrounding context, colors, materials, locations, plants, and planting plan.
- (6) Such items shall comply with applicable codes and laws of general applicability.

D. Regardless whether or not poles, support structures, or other infrastructure on or to which small wireless facilities will be attached are privately or publicly owned, requirements of Sections 120.001 through 120.013, including without limitation, permitting and aesthetic requirements, shall apply with respect to small wireless facilities attached on or to any poles, support structures, or other infrastructure located within City right of way, except to the extent expressly proscribed by the Small Wireless Facilities Deployment Act.

§ 120.012. MAKE-READY WORK.

- A. In its application, the applicant shall identify any make-ready work proposed to be performed by the City. Within one hundred twenty days after receipt of a completed application that includes a proposal for make-ready work that the City Engineer determines satisfactory, the City shall provide a preliminary good faith estimate of the cost of such make-ready work to be paid by the applicant to the City. The applicant shall accept such good faith estimate by paying to the City the amount of the estimated cost, after which City shall commence the make-ready work. Make-ready work to be performed by the City shall be completed within ninety days after written acceptance of the good faith estimate by the applicant, subject to any delays for causes beyond the control of City. Upon the City's completion of the make-ready work, the applicant shall pay the City, or the City shall refund to the applicant, as the case may be, the difference between the cost estimate paid and the actual cost. Total fees shall not exceed actual costs of the make-ready work. Alternatively, the City and the applicant may agree that the applicant or a party other than the City may perform the make-ready work, subject to the City's approval before and after the work.
- B. The City may require replacement of the utility pole if the City Engineer 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.

§ 120.013. 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 closing on the permittee's conveyance of the small wireless facilities and associated equipment or structures to the assignee, and the applicant and the assignee sign and file with the Planning Department a notice of assignment, containing:

- A. The assignee's name, address, telephone number, and e-mail address, including emergency contact information;
- B. Exact location of all small wireless facilities and associated equipment or structures being assigned; and
- C. Assignee's assumption of all permittee's obligations under the permit, this article, and applicable law, in form and content satisfactory to the City Engineer.

SECTION 2. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 3. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this ordinance and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 16TH DAY OF JUNE 2020.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk