

**AN ORDINANCE AMENDING AND ENACTING CHAPTER THIRTY-NINE (39) OF THE CITY CODE OF THE CITY OF DICKINSON, NORTH DAKOTA, RELATING TO ZONING AND WIRELESS TELECOMMUNICATIONS FACILITIES**

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF DICKINSON, NORTH DAKOTA, AS FOLLOWS:

**Section 1:** Article 39.06.012 of the City Code of the City of Dickinson is hereby amended and enacted as follows:

**Section 39.06.012 Supplemental Use Regulations: Miscellaneous Uses**

**A. Communications Towers**

A structure situated on a nonresidential site that is intended for transmitting or receiving television, radio or telephone communications, excluding those used exclusively for dispatch communications. Communications towers require a special use permit and must be based, at a minimum, upon the design standards listed below:

1. The minimum setbacks from the tower base to any property line shall be the 1.00 times the maximum height of the tower.
2. The setback distance of the tower from any non-residential structure or roadway (whether existing, platted, or prescribed by statute) shall be equal to 1.25 times the height of the tower. The setback distance shall be measured from the nearest point on the base of the tower to the nearest point at the base of the existing structure or the nearest boundary of the right-of-way (as defined by this Code), as applicable.
3. The setback distance of the tower from any habitable residential structure shall be 1.75 times the height of the tower. The setback distance shall be measured from the nearest point on the base of the tower to the nearest point at the base of the residential structure.
4. Minimum setbacks may be waived by the City Commission if the developer submits the following written documents:
  - a. A fall letter signed by a structural engineer with a wet registered professional engineer's seal and signature; and
  - b. A letter of no objection signed by the affected adjacent property owner.
5. The maximum allowable height of a communications tower shall be determined at the time of the application for a special use permit. Determination of maximum height shall be based upon existing conditions of the site, compatibility with surrounding land uses, and applicable state and federal regulations governing the height of such facilities. The height of the tower shall include the antenna and all related and/or attached structures.
6. The equipment compound shall not be used for storage of any excessive equipment; hazardous waste, or habitable space. No outdoor storage shall be allowed on site.
7. The developer shall be responsible for all maintenance associated with the tower, the tower compound and the roads accessing the tower.
8. The tower shall allow for co-location of additional providers.
9. The developer shall provide a six-foot fence around the perimeter of the tower compound. Chain-linked fences shall be painted or coated with a non-reflective color.
10. Prior to building permit issuance, the developer shall submit a letter from the Federal Aviation Administration (FAA) stating that the tower does not exceed the maximum height permitted under FAA rules.
11. Signs located at the telecommunications facility shall be limited to ownership and contact information, Federal Communications Commission antenna

- registration number (if required), and any other information as required by government regulation. Commercial advertising is strictly prohibited.
12. Unless required by the Federal Communications Commission or the Federal Aviation Authority, the telecommunications tower shall not be lighted.
  13. Security lighting for the equipment shelter shall be confined to the boundaries tower site.
  14. Towers shall be constructed of galvanized metal and shall be of an appropriate color to harmonize with the surroundings.
  15. A site plan, drawn to a scale of not less than one inch = 100 feet shall be required to accompany any and all special use permit applications and building permit applications for a communications tower.
  16. A photograph with a simulation of the proposed communications tower shall be included as part of the special use permit application.
  17. Any proposed change of use of the tower, increase in height or change of location shall require a hearing before the City of Dickinson Planning and Zoning Commission as well as approval from the Dickinson City Commission.
  18. Development of the radio tower shall be performed in accordance with all applicable County, State and Federal rules and regulations.
  19. The service provider shall report to the Planning Director if the telecommunications tower facility is no longer in use. The telecommunications tower facility shall be removed, at the service provider's expense, within six (6) months of this notice and the site shall be restored by the service provider to its pre-existing condition.

If deemed necessary, the City may impose addition conditions to the conditional use permit. (Ord. No. 1610 § 5.)

#### B. Wireless Telecommunication Facilities in the Public Right-of-Way

Residents, businesses and public safety operations in the City must have reliable access to wireless telecommunications network technology and state of the art mobile broadband communications services, accommodated by the City's deployment of wireless communications facilities and services within the public right-of-way. The City also desires to minimize potential negative impacts of wireless facility placement within the public right-of-way. Nothing in this section affects the City's right to regulate users of the public right-of-way in a competitively neutral and nondiscriminatory manner. The City intends to exercise its authority with respect to the regulation, placement, construction, and modification of wireless facilities in the public right-of-way to the fullest extent permitted by applicable law.

##### 1. Locating Wireless Communication Facilities

The location of any new wireless communication facility in the public right-of-way shall be, when possible, on existing structures, such as utility poles through agreement with the pole owner, or street lights, or the replacement of an existing structure as provided herein. Installation of additional wireless support structures for the purpose of supporting a wireless communication facility within the public right-of-way will be permitted only as provided for in this ordinance and the applicant must have a franchise with the city for the use of the public right-of-way, or MAA, or an encroachment agreement for that specific location and an installation permit.

##### 2. Installation Permit Required

A. No person may construct, install or modify a wireless communication facility within the public right-of-way without having first done one of the following:

1. Having entered into an MAA with the City, if the wireless communication facility will be installed on city-owned existing or previously approved new infrastructure.
2. Having obtained a franchise from the City allowing use of the public right-of-way.
3. Having obtained an encroachment agreement allowing the specific occupation of the public right-of-way location.

4. Having entered into an agreement to co-locate with an entity with infrastructure in the right-of-way pursuant to a current franchise.
- B. Installation Permit Issuance. In each case, the person must also obtain an installation permit from the City as set forth in this chapter. Before a Site License, if applicable, is agreed upon and an installation permit is issued, a written application for each site must be filed with the City Engineer or his or her designee containing such information as may be required by the City Engineer or his or her designee. The application shall include the following:
1. Information required to be provided by a registrant for public right-of-way use and occupancy under this chapter.
  2. The name and address of any retail communications service provider for which the facilities are intended to be used, if this is different than the applicant.
  3. Evidence that the applicant has obtained all state permits and other licenses, as well as insurance, performance and payment bonds as may be required by the City.
  4. A detailed statement of the location of all proposed facilities for which the permit is sought.
  5. A construction plan.
  6. Other information required by this chapter.
- C. Fees. The City may require payment of a nonrefundable installation permit application fee at the time an installation permit application is submitted, as approved by the Board of City Commissioners and adopted in the Wireless Facilities Guidelines, which shall not exceed \$270. Such fees shall be set to recoup some or all of the cost of permit review, processing and issuance, and will be in addition to any other applicable fee or any separate payments that may be required in the event an installation permit is granted for use of the public right-of-way or the use of city-owned structures. The City reserves the right to charge applicants for installation permits and an annual fee for their use of the public right-of-way to the extent that such charges are allowed under state law. All such fees shall be described in the Wireless Facility Guidelines and may be in addition to any fee charged for or cost associated with attachment to city-owned structures.
- D. Where the City determines that it requires expert assistance in evaluating an application, the City may procure technical and other specialized consulting services that may be necessary to promptly and thoroughly review the application. Reasonable fees charged by the consultant, in an amount not to exceed \$200 per site, shall be reimbursed to the City by the applicant regardless of whether the application is, or is not, ultimately approved and a permit issued. The City shall be authorized to require the applicant to deposit a sum equal to the reasonable estimated amount of consultant fees to be paid.
- E. Time for Review. The City Engineer or his or her designee shall comply with applicable federal, state and local law concerning the time period for review following receipt of a completed application to install or modify a wireless communications facility or wireless support structure in the public right-of-way. Specific timeframes shall be described in Wireless Facility Guidelines.
- F. Nondiscrimination. The City shall evaluate, issue, and deny permit applications under this article on a competitively neutral basis, with no unreasonable discrimination among similarly situated applicants and installations.
- G. The City may impose additional reasonable conditions on any installation permit issued under this article relating to time, place and manner.
- H. The City shall not impose environmental testing, sampling, or monitoring requirements or other compliance measures for RF emissions on wireless communication facilities that are categorically

excluded under the FCC's rules for radiofrequency remissions pursuant to 4 CFR 1.1307(b)(1).

I. Scope and Duration.

1. Any installation permit granted pursuant to such application shall be limited in scope to the description submitted in a completed application, as modified by any further agreed-upon conditions or subsequently approved modification.
2. The installation permit shall be voidable by the City unless in the City's determination the work is commenced within one hundred eighty (180) days from the date of issuance of the permit, unless extended by the city engineer. If the facility is not used for its intended use within twelve (12) months from the date of permit issuance, the City may revoke the permit.
3. Within sixty (60) days following completion of facility installation as described in the permit application, the permit holder shall submit as-built diagrams in digital format and digital photographs of the Site to the City Engineer or his or her designee.
4. MAAs issued under this article are valid for a period of fifteen (15) years. To extend the MAA for an additional period of ten (10) years, the permit holder shall provide proof that it continues to have the legal authority to occupy and use the public right-of-way for the purpose set forth in its permit; shall affirm that its site as it exists at the time of the renewal is in full compliance with the applicable city permit or permits issued for the site and any current franchise agreement, and is in compliance with FCC regulations; and shall pay any permit processing fee required for renewal. Failure to submit such proof of legal authority or affirmation of compliance shall be grounds for non-renewal of the permit. The burden is on the permit holder to demonstrate that the site complies with the requirements herein.

J. Conditional Upon Related Agreements. The City may cause a permit under this article to be made temporary or conditional upon the execution of a finalized permit application or attachment agreement further addressing the proposed installation.

K. Proximity to Other Facilities. The City reserves the right to deny, but is not obligated to deny, any siting permit application under this chapter that proposes to install a new wireless support structure within three hundred (300) feet of any other existing wireless support structure. It is the intent of this provision to encourage the collocation of wireless communication facilities on the same wireless support structure or on existing buildings or other structures, and to sensibly limit the overall visual impact of wireless communications in the public right-of-way.

L. Denial of Permit. Any denial of permit shall be made in writing, supported by substantial evidence that the proposed installation would be inconsistent with one or more of the provisions of this Code of Ordinances or with the health, safety and welfare of the City.

3. General Conditions

The City may approve a permit for the installation of a wireless communication facility in the public right-of-way, provided the applicant certifies compliance with the following general conditions, and subject to other use-specific conditions and other requirements set forth in this article and in any Wireless Application Guidelines.

A. General Design Standards.

1. The installation shall be unobtrusive, harmonious with its surroundings, and streamlined in appearance. The City engineer/planning director shall require camouflage or concealment efforts. For installations in residentially zoned areas, Downtown Commercial zoned areas, or for installations in the Downtown Overlay District, the West Villard Overlay District, and/or the Corridor Overlay District, all designs of wireless communication facilities must comply with zoning

requirements and shall be approved by the City Planning Director.

2. The height of any wireless communication facility shall be limited to nearby structures of similar type and not more than 60 feet above normal grade unless otherwise approved by the City in the installation permit.
3. Antennas shall be as small as possible. To address the physical and aesthetic impact on the public right-of-way, the City engineer/planning director may limit the physical size and design of the antenna.
4. All riser cabling and wiring must be contained in conduit, affixed directly to the face of the structure, or enclosed within the hollow interior of the pole, for as long as it is technically feasible. No exposed slack or extra cable will be allowed. All improvements shall match the color of the installation structure.
5. No signage or advertising will be permitted, except as required by law or as specifically permitted.
6. Wireless communication facilities either in historic areas, or located within 300 feet or one block of historic areas, shall comply with any special requirements applicable to such areas, and may be subject to additional city review.

**B. Minimizing Impacts on Adjacent Property Owners.**

1. A permit holder must design and install a wireless communication facility so as to minimize any impact on the adjacent property owners, and must actively mitigate any unreasonably adverse impact relating to visibility from the adjacent property; access to and from the adjacent property; intrusion of light, sound, or smell; in addition to any other cognizable unreasonable and substantial impact made known by an adjacent property owner.
2. No Antenna shall be within five (5) feet of a door, balcony or window nor placed in front of any window within 20 feet and located at a similar height to the antenna unit on the adjacent public right-of-way, unless otherwise restricted by the right-of-way width.
3. An installation shall not interfere with city operations, or the operations of preexisting third-party installations in the public right-of-way. The City will reasonably cooperate with the applicant and/or permit holder to permit activities and modifications that may effectively avoid or correct the interference.
4. Any installation shall aesthetically blend in with structures in the immediate area. The planning director shall determine, during the permit review period, if the installation aesthetically blends in with structures in the surrounding area.
5. Installation on decorative lighting shall not exceed the height of banners or interfere with banner movements.

**4. Wireless Communications Facilities Upon Existing Structures**

In addition to the general conditions described in this ordinance and any specification contained in the Wireless Facility Guidelines, any wireless communication facility for which an installation permit is requested under this chapter shall meet the following requirements:

- A. The wireless communication facility shall not increase total existing height, including the wireless support structure, by more than 10% over other public utility poles in the area unless, in the City engineer's/planning director's discretion, an alternative height is accepted depending on the type and structure of the existing facility and the proposed location.
- B. The wireless communication facility shall not impair nighttime visibility in the area that result from light emanating from a utility structure and shall not otherwise interfere with the original purpose of an existing structure.
- C. The wireless facility shall not interfere with light fixtures, banners, holiday decorations, or the pole lighting plug.

D. Electrical power. Unless otherwise provided in the applicable Site License, franchise, or encroachment agreement the acquisition of electrical power shall be the sole responsibility of the applicant.

5. Attachments to City-Owned Structures

In addition to the requirements set forth in this chapter and the Wireless Facility Guidelines, the following conditions will apply to a wireless communication facility attached to a city-owned structure:

- A. The City shall require an applicant for a wireless communication facility attachment to a city-owned structure to execute a separate MAA with the city addressing such attachment.
- B. The management of attachments to city-owned structures is governed by the MAA between the City and the applicant. The MAA does not waive any zoning, building code or other public right-of-way management requirements that may also apply.
- C. The City shall require payment of rental fee, permit fee, application fee or other compensation, as set forth in the Wireless Facility Guidelines as well as in the City's fee schedule.
- D. In the event a city-owned wireless support structure is compromised or knocked down, the City and an affected wireless communication facility permit holder will cooperate to reinstall or replace the pole and restore the wireless communication facility. If it is determined the failure occurred due to installing additional weight or due to wind load the lessee shall be responsible for the cost of reinstalling or replacing the support structure. Otherwise, the City and the lessee shall share the cost of reinstalling or replacing the support structure.
- E. Training. At the request of the City, the permit holder shall host on-site training for city maintenance staff. The training will be offered semiannually or as otherwise agreed between the parties. The training shall include occupational safety, personal protection, proximity limits, emergency procedures and contact information.

6. Replacement of City-Owned Structures or Addition of City-Owned Structures

In addition to the general conditions described in this chapter and the Wireless Facility Guidelines, the proposed replacement of an existing city-owned structure or placement of a new city-owned structure shall be subject to the following requirements.

- A. The replacement of a city-owned structure or the addition of a new city-owned structure shall be entirely at the reasonable discretion of the city engineer and at a minimum, must be able to co-locate at least one additional similar facility.
- B. New standalone poles shall meet the following criteria:
  - 1. Align with existing streetlights and street trees as to maintain organization and to keep out of pedestrian ways.
  - 2. Maintain a minimum of 10 feet from any above grade building face, including projecting windows.
  - 3. Not violate applicable local, state and/or federal laws, including the Americans with Disabilities Act.
  - 4. Maintain a minimum distance of 15 feet from a tree trunk as measured from the outside of the tree.
  - 5. Maintain a minimum distance of six feet from existing fire hydrants or from a buildings' fire connection.
  - 6. Maintain a minimum distance of 10 feet from light and safety poles.
  - 7. Maintain a minimum of three feet from bicycle racks and shall not impede the attachment of bicycles.
  - 8. Not be located within the site triangle at intersections.
  - 9. Maintain a minimum distance of 15 feet from driveways as measured from the edge line of the driveway.
- C. Before installing a new structure in the right-of-way or replacing an existing structure, the applicant must demonstrate the following, to the satisfaction of the city engineer:

1. That the facility is not able to be placed on existing infrastructure. The applicant shall provide a map of existing infrastructure in the service area and describe why each such site is not feasible.
  2. That city functions for which the original structure was used will be preserved, improved or enhanced, as part of any replacement structure, at the applicant's expense. Replacement of lighting, electrical power, network connectivity, and any other functional purpose of, on or within the original structure shall be done to the satisfaction of the city engineer.
  3. In order to place a new city-owned facility, the applicant must establish to the satisfaction of the city engineer that there are no existing or replacement structures that would provide the necessary capabilities, that the new facility serves a public purpose other than wireless communication, and that placement of the facility outside of the right-of-way on private property would be unduly burdensome.
- D. Ownership. A replacement structure or a new structure under this section shall be dedicated to and owned by the city upon completion, to the satisfaction of the city. Unless otherwise provided in the applicable MAA, Site License, franchise, or encroachment agreement, the permit holder shall provide city a Bill of Sale, free and clear of all liens and encumbrances.
- E. Unless otherwise provided in the applicable Site License, franchise, or encroachment agreement, acquisition and use of electrical power to serve a wireless communication facility on a replacement wireless support structure or facility shall be the sole responsibility of the permit holder.
- F. Stocked Poles. To enable prompt replacement in the event of a knockdown or structural compromise, a permit holder shall provide the city with an inventory of completely assembled poles to be kept by the city. The inventory shall consist of, for each type/style of pole, one pole substantially identical to the initial city-owned replacement pole. For each set of five additional replacement poles of any particular type/style, an additional pole of that type/style.
- G. Facilities placed in the right-of-way shall be maintained in accordance with the terms of this article and as provided for in a separate agreement.
- H. An applicant shall be required to enter into such license and other agreements with the city or third parties as the city may require to affect the replacement, consistent with this section.
7. Equipment
- A. Equipment other than ground-mounted equipment shall be mounted in one of the manners described below, or as prescribed by the city engineer/planning director.
1. Equipment shall be mounted in a base shroud of approved design. The base shroud should be coated or painted an approved color to match the pole and installed in a manner that does not impede the use of sidewalks or trails.
  2. Equipment shall be mounted directly to the pole a minimum of twelve (12) feet above the existing grade and be coated or painted with an approved color to match the pole.
  3. Equipment shall be mounted to the pole in an equipment box a minimum of twelve (12) feet above the existing grade. The equipment box shall be coated or painted an approved color to match the pole. This equipment shall not interfere with the cast of light, use of banner arms
  4. Equipment shall be attached to the wireless support structure in a manner as approved by the city engineer/planning director.
- B. Ground-Mounted Equipment.
1. A permit for a wireless communication facility that involves ground-mounted equipment will be issued if the city engineer finds the following:
    - i. The ground mounted equipment will not disrupt traffic or pedestrian circulation;

- ii. Space exists in the public right-of-way to accommodate the ground mounted equipment;
  - iii. The ground mounted equipment will not create a safety hazard;
  - iv. The location of the ground mounted equipment minimizes impacts on adjacent property;
  - v. In any historical area, that the ground mounted equipment not detrimentally affect the historical nature of the area, to the satisfaction of the city engineer;
  - vi. That no reasonable alternative exists that is more favorable to adjacent property owners and to effective use and management of the public right-of-way; and
  - vii. The ground mounted equipment will not adversely impact the health, safety or welfare of the community.
  - viii. All ground mounted equipment shall to the extent feasible be located either underground, incorporated into street furniture, or concealed in the base of the pole.
  - ix. Ground mounted equipment either located in historic areas, or located within 300 feet or one block of historic areas, shall comply with any special requirements applicable to such areas, and may be subject to additional city review.
2. Underground equipment. The city engineer may require, at his or her discretion, that utilities be placed underground, and may prohibit the installation of ground mounted equipment unless technically infeasible or otherwise cost prohibitive.
- C. Any excavation required for installation of ground-mounted or underground equipment shall be performed in accordance with all requirements of the City's municipal code
8. Attachment to City-Owned Buildings  
The City may permit the attachment of a facility to a city-owned building upon the recommendation of the city engineer/planning director and the approval of a lease by the city commission. An installation permit shall be required for such installations.
9. General Indemnification  
In addition to and distinct from any insurance requirements required by the city of the applicant, each applicant hereby agrees to defend, indemnify and hold harmless the city and its officers, officials, boards, commissions, employees, agents and representatives from and against any and all damages, losses, claims and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the applicant or its affiliates in the construction, installation, operation, maintenance, repair, removal or replacement of the small cell facility. This Section shall not require the applicant to indemnify or hold harmless the city for any losses, claims, damages, and expenses arising out of or resulting from the negligence or willful misconduct of the city.

**Section 2:** Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

**Section 3:** Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

**Section 4:** Effective Date: This Ordinance shall be in full force and effect from and after the final passage.

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Scott Decker, President  
Board of City Commissioners

ATTEST

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Brian Winningham, City Administrator

First Reading: September 21, 2021  
Second Reading: October 5, 2021  
Final Passage: October 5, 2021