

SUBCHAPTER 1V WIRELESS COMMUNICATIONS FACILITIES

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5-1V-1 PURPOSE. This Chapter implements Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”), as interpreted by the Federal Communications Commission’s (“FCC” or “Commission”) Acceleration of Broadband Deployment Report & Order and Iowa Code Chapter 8C. This Chapter does not apply to Micro or Small Wireless Facilities as defined pursuant to the provisions of Iowa Code Chapter 8C; FCC licensed amateur (ham) radio facilities; satellite dishes and/or antennas used for private television reception not exceeding one meter in diameter; or Towers or Transmission Equipment erected by the City, County, or State for public safety or other public purposes.

5-1V-2 DEFINITIONS. The following words and phrases whenever used in the ordinances of the City, shall be construed as defined in this section unless, from the context, a different meaning is intended or unless different meaning is specifically defined and more particularly directed to the use of such words or phrases:

1. “Applicant” means any person engaged in the business of providing wireless telecommunications services or the wireless telecommunications infrastructure required for wireless telecommunications services and who submits an Application.

2. “Application” shall mean a request submitted by an Applicant to the City for the following:

- a. an Eligible Facilities Request,
- b. to construct a new Tower,
- c. for the initial placement of Transmission Equipment on a Wireless Support Structure,
- d. for the modification of an existing Tower or existing Base Station that constitutes a Substantial Change to an existing Tower or existing Base Station, or
- e. any other request to construct or place Transmission Equipment that does not meet the definition of an Eligible Facilities Request.

3. “Base Station” shall mean a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a Tower as defined herein or any equipment associated with a Tower. Base Station includes, without limitation:

- a. Equipment associated with wireless communications services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.
- b. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- c. Any structure other than a Tower that, at the time the relevant Application is filed with the City under this section, supports or houses equipment described in paragraphs (3)(a)-(3)(b) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant Application is filed with the City under this section, does not support or house equipment described in (3)(a)-(3)(b) of this section.

4. “Collocation” means the mounting or installation of Transmission Equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

5. “Electric Utility” shall mean any owner or operator of electric transmission or distribution facilities subject to the regulation and enforcement activities of the Iowa Utilities Board relating to safety standards.

6. “Eligible Facilities Request” shall mean any request for modification of an existing Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station, involving:

- a. Collocation of new Transmission Equipment;
- b. Removal of Transmission Equipment; or
- c. Replacement of Transmission Equipment.

7. “Eligible Support Structure” shall mean any Tower or Base Station as defined in this section, provided it is existing at the time the relevant Application is filed with the City under this section.

8. “Wireless Support Structure” shall mean a structure that exists at the time an Application is submitted and is capable of supporting the attachment or installation of Transmission Equipment in compliance with applicable codes, including, but not limited to, water towers, buildings, and other structures, whether within or outside the public right-of-way. “Wireless Support Structure” does not include a Tower or existing Base Station.

9. “Existing” shall mean a constructed Tower or Base Station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a Tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.

10. “FAA” means the Federal Aviation Administration of the United States

11. “FCC” means the Federal Communications Commission of the United States.

12. “Initial Placement or Installation” shall mean the first time Transmission Equipment is placed or installed on a Wireless Support Structure.

13. “Monopole Construction” shall mean a Tower consisting of a single vertical structure not supported by radiating guy wires or support structure, and distinguishable from a lattice or truss tower.

14. “Site” shall mean Towers not in the public right-of-way, the current boundaries of the leased or owned property surrounding the Tower and any access or utility easements currently related to the site, and, for other Eligible Support Structures other than towers, that are in proximity to the structure and to other Transmission Equipment already deployed on the ground.

15. “Substantial Change” means a modification substantially changes the physical dimensions of an Eligible Support Structure if it meets any of the following criteria:

- a. For Towers other than Towers in the public rights-of-way, it increases the height of the Tower by more than 10% or by the height of one additional antenna array with separation from

the nearest existing antenna not to exceed twenty feet, whichever is greater; for other Eligible Support Structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

b. For Towers other than Towers in the public rights-of-way, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for other Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

c. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for Towers in the public rights-of-way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

d. It entails any excavation or deployment outside the current Site;

e. It would defeat the concealment elements of the Eligible Support Structure; or

f. It does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure or Base Station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (13)(a)-(13)(f) of this section.

g. Height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops. Otherwise, height shall be measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act, Pub. L. No. 112-96, Tit. VI.

16. "Transmission Equipment" shall mean equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

17. "Tower" shall mean any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and the associated Site.

18. “Wireless Facility” means equipment at a fixed location that enables the transmission of wireless communications or information of any kind between user equipment and a communications network, except that Wireless Facility does not include coaxial or fiberoptic cable that is not immediately adjacent to, or directly associated with, a particular antenna.

19. “Wireless Support Structure” means a structure that exists at the time an Application is submitted and is capable of supporting the attachment or installation of Transmission Equipment in compliance with applicable codes, including, but not limited to, water towers, buildings, and other structures, whether within or outside the public right-of-way. “Wireless Support Structure” does not include a Tower or existing Base Station.

5-1V-3 ZONING AND LAND USE. The City exercises zoning, land use, planning, and permitting authority regarding the siting of Transmission Equipment within the City’s territorial boundaries and within the two-mile limit of the City’s territorial boundaries, subject to the provisions of Iowa Code Chapter 8C and federal law.

5-1V-4 SPECIAL USE PERMIT REQUIRED. All Applications, except for Applications for Eligible Facilities Requests, shall require a Special Use Permit. Applications for the construction of new Towers shall be limited to the City’s A-1, B-1, I-1, I-2 or I-3 zoning districts. All other Applications shall be limited to the City’s A-1, B-1, I-1, I-2, I-3 or B-2 zoning districts. The Zoning Board of Adjustment may, following public hearing, and subject to applicable state and/or federal requirements, approve, approve with conditions, or deny requests for Special Use Permits relative to an Application.

5-1V-5 SPECIAL USE PERMIT APPLICATION PROCESS.

1. A Special Use Permit shall not be considered by the Zoning Board of Adjustment unless and until the following requirements are met:

a. An Application for Special Use Permit and all information set out in Section 5-1V-7(6) are submitted for review, which the Zoning Board of Adjustment will consider in approving, approving with conditions, or denying a Special Use Permit. In the event of a conflict between provisions of this Subchapter and provisions generally applicable to a Special Use Permit, the provisions of this Subchapter shall control. Further, the written protest provisions set forth in Section 5-1V-3 shall not apply to Special Use Permits considered under this Subchapter.

2. Notice of a public hearing on an application for Special Use Permit shall be published in accordance with the provisions of Iowa Code Section 362.3 not less four (4) and not more than twenty (20) days in advance of such hearing. Additionally, the City shall send public hearing notices by regular mail to owners of property located within two hundred (200) feet of the exterior boundaries of the Site.

5-1V-6 EXCEPTIONS. The Zoning Board of Adjustment may, in approving a Special Use Permit, grant exceptions from the criteria set forth in 5-1V-7(6) if Applicant submits a technical study acceptable to the Zoning Board of Adjustment which confirms the exception is essential to the provision of service and no alternative is available that conforms to the criteria in question.

5-1V-7 APPLICATION REVIEW FOR ALL APPLICATIONS.

1. Application. Applicant shall complete an Application form and indicate whether its Application and intended use is for:

- a. an Eligible Facilities Request;
- b. construction of a new Tower;
- c. initial placement of Transmission Equipment on a Wireless Support Structure;
- d. modification of an existing Tower or existing Base Station that constitutes a Substantial Change to an existing Tower or existing Base Station; or
- e. any other request to construct or place Transmission Equipment that does not meet the definition of an Eligible Facilities Request.

2. Application Fee. The Application fee, including all City and third-party fees for review or technical consultation, shall be reasonably related to actual and direct administrative costs according to Iowa law and are as follows;

- a. Up to \$500 for Eligible Facilities Request;
- b. Up to \$3,000 for New Tower;
- c. Up to \$3,000 for Initial Placement or Installation of Transmission on a Wireless Support Structure;
- d. Up to \$3,000 for Modification of an Existing Tower that Constitutes a Substantial Modification;
- e. Up to \$3,000 for any other Application to construct or place Transmission Equipment.

3. Third-Party Review or Technical Consultation. The City may retain the services of third-party entities of its choosing to provide review or technical consultation of Applications, including, but not limited to, attorneys, surveyors, and engineers. Such third-party review may include without limitation:

- a. The accuracy and completeness of Applications, including items submitted therewith;
- b. The validity of analysis, techniques, and methodologies proposed by Applicant;
- c. The validity of conclusion reached by Applicant; and

d. Whether the Application satisfies applicable approval criteria set forth in this Chapter.

4. Review Process. The Zoning Board of Adjustment shall apply the following criteria, as applicable, in approving, approving with conditions, or denying a Special Use Permit relative to an Application:

a. Height, Setback, Fall Zone, and Lot Area Requirements.

(1) No Tower shall exceed a height of one hundred fifty (150) feet above grade, unless otherwise approved by the Zoning Board of Adjustment. A lightning rod, not to exceed ten (10) feet in height, shall be not be included within the height limitation.

(2) No Transmission Equipment, Wireless Facilities, or Base Stations installed upon or affixed to a Wireless Support Structure shall exceed the height of the Wireless Support Structure, at its highest point, by more than twenty-five (25) feet, unless otherwise approved by the Zoning Board of Adjustment.

(3) Towers and Base Stations shall be located so the distance from the base of the Tower (or distance from guy wires if used in conjunction with a Tower) and to any adjoining property satisfies the minimum building setback requirement for the zoning district in which the Tower is located. Base Stations shall similarly comply with such minimum building setbacks.

(4) Notwithstanding compliance with minimum building setback requirements for the zoning district in which a Tower is located, all Towers shall be situated to provide a sufficient fall zone such that the distance from the base of the Tower to the nearest occupied structure, public right-of-way, residential zoning district, and/or property designated for residential use by the City's comprehensive plan, exceeds the height of the Tower. Provided, if the Tower is constructed utilizing breakpoint design technology, the minimum distance for purposes of this subparagraph shall be equal to 110% the distance from the top of the Tower to the designed breakpoint. For example, on a 100-foot monopole Tower with a breakpoint at eight (80) feet, the minimum distance would be twenty-two (22) feet (100% of 20 feet, the distance from the top of the Tower to the breakpoint).

(5) For the purposes of determining compliance with setbacks, lot coverage, and other such requirements for the zoning district in which a Tower and Base Station are located, the dimensions of the entire lot or parcel shall control, even if located on a leased area situated within such lot or parcel.

b. Compliance with State and Federal Requirements. Towers, Transmission Equipment, and Base Stations must meet or exceed current standards and regulations of the FCC, FAA, and any other state or federal agency with the authority to regulate Towers.

c. Compliance with Applicable Building Codes/Safety Standards. Towers, Transmission Equipment, and Base Stations shall be constructed, installed, and maintained in

compliance with standards set forth in applicable state or local building codes and industry safety standards and subject to all applicable permitting and approvals.

d. Collocation. In furtherance of the City's objective of encouraging collocation, Towers exceeding eighty (80) feet in height must be designed and constructed to accommodate additional communication antennas when technically feasible.

e. Design and Construction. All Towers shall be of monopole construction and equipped with anti-climbing devices, unless otherwise approved by the Zoning Board of Adjustment.

f. Fencing. Towers (and guy wires if used in conjunction with a Tower) shall be enclosed by a security fence not less than six (6) feet in height, provided this requirement shall not prevent fencing required to satisfy state or federal requirements.

g. Lighting. Towers and Transmission Equipment shall not be illuminated unless required to conform to FCC, FAA, or other state or federal requirements. If lighting is required, the lighting alternative or design chosen must cause the least disturbance to surrounding views and/or surrounding properties. Security lighting may be provided around the base of a Tower if zero cut-off luminaries with a maximum mounting height of twelve (12) feet are used to limit lighting to the Tower site.

h. Finishing. Towers shall be painted or coated silver or have a galvanized finish, or be painted a neutral color to reduce visual obtrusiveness to the maximum extent possible, unless otherwise required by state or federal requirements. Towers and Transmission Equipment shall not be painted in such a manner as to convey a company identity, and all Transmission Equipment shall be of a color that matches the Tower, unless otherwise required by state or federal requirements.

i. Signage. No signage, logos, decals, symbols, or messages of a commercial nature may be displayed upon a Tower, Base Station, Wireless Support Structure, or required fencing, except for warning and identification signs and notifications, and such other signs as may be required by local, state, or federal requirements

j. Landscaping/Buffering.

(1) Towers and associated Base Stations shall be landscaped with a buffer of plant material that effectively screens from view the base of the Tower and Base Station from adjacent properties and/or streets. The plantings installed shall be of a size and species that can achieve a height of six (6) feet and seventy-five percent (75%) opacity during at least three seasons.

(2) In locations where the visual impact of the Tower and Base Station would be minimal, as determined by the Zoning Board of Adjustment, the landscaping requirement may be reduced or waived. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. Natural growth around the perimeter of the site may

be considered a sufficient buffer for a Tower and Base Station, as determined by the Zoning Board of Adjustment.

k. Concealment.

(1) Transmission Equipment or Base Stations installed upon or affixed to a Wireless Support Structure shall be installed so as to camouflage, disguise, or conceal them to make them closely compatible with and blend into the setting and/or Wireless Support Structure.

(2) Transmission Equipment or Base Stations installed upon or affixed to a building shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the architectural features of the building, shall be proportional to the building, and shall utilize materials of a similar quality finish, color, and texture as the building.

(3) Roof-mounted Transmission Equipment or Base Stations shall be set back from all roof edges to the maximum extent feasible with need for light-of-sign transmission and reception of signals.

l. Outdoor Storage Prohibited. Except during a reasonable period during construction or maintenance, as determined by the City Manager or the City Manager's designee, outdoor storage of vehicles, equipment, tools, supplies, materials, and other items at Sites is prohibited.

m. Vehicular Access. All Sites shall have vehicular access to and from the Site and a public street.

5. Required Submissions. Applications submitted pursuant to this Subchapter, excluding Application's for Eligible Facilities Requests (unless otherwise noted), shall include the following materials:

a. Identifying Information. The legal name of Applicant and name, title, mailing address, telephone number, and email address of the individual responsible for filing and processing Applicant's Application.

b. Application Designation. An attestation from Applicant stating whether the Application constitutes an Eligible Facilities Request, and Application for new Tower construction; or an Application for the initial placement or installation of Transmission Equipment on Wireless Support Structures, modification of an existing Tower or Existing Base Station that constitutes a substantial change, or other requests for construction or placement of Transmission Equipment that do not constitute an Eligible Facilities Request.

c. Explanation Regarding Request for New Tower. An explanation regarding the reason for choosing the proposed location for construction of a new Tower and the reason Applicant did not choose Collocation. The explanation shall include a sworn statement from an individual who has responsibility over placement of the Tower attesting that Collocation within the area determined by Applicant to meet Applicant's radio frequency engineering requirements for the

placement of a site would not result in the same mobile service functionality, coverage, and capacity, is technically infeasible, or is economically burdensome to Applicant.

d. FCC Documentation. Applicant shall provide a copy of Applicant's FCC license or registration.

e. FAA Documentation. An affidavit attesting conformity with applicable FAA lighting and marking requirements.

f. Evidence of Site Control. A legally binding document demonstrating Applicant has control of the Site for purposes set forth in Applicant's Application.

g. Site Plan. Complete and accurate plans and drawings, drawn to scale, prepared signed and sealed by an Iowa-licensed engineer, land surveyor and/or architect, including:

(1) Depiction of all proposed Transmission Equipment, Wireless Facilities, Towers, Base Stations, and/or Wireless Support Facilities;

(2) Elevation drawings demonstrating compliance with applicable height requirements;

(3) A depiction of required fencing, landscaping, and/or screening;

(4) A depiction of all proposed utility runs and points of contact; and

(5) A depiction and description of the leased or licensed area showing the relative location of all proposed Transmission Equipment, Wireless Facilities, Towers, Base Stations, and/or Wireless Support Facilities, with all rights-of-way and/or easements for access and utilities clearly identified.

h. Visual Analysis. A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction/installation views from at least four angles, together with a map indicating the location of each view.

i. Design Justification. A clear and complete written analysis that explains how the proposed design complies with applicable designed standards set forth in the Chapter 9 to the maximum extent feasible and identifies all applicable design standards complete with a factually detailed explanation of how and why the proposed design either complies or cannot feasibly comply.

j. Structural Assessment. A structural assessment of the proposed Tower or Wireless Support Structure conducted by an Iowa-licensed engineer.

k. Compliance Statement. A certificate, report, or plan containing a statement by an Iowa-licensed engineer indicating compliance with applicable Building Codes and/or Safety Standards.

l. Other Published Materials. All other information or materials the City may reasonably require from time to time, provided notice of the same is made publicly available and designated as part of the application requirements.

m. Limitation of Information. The information requested for an Application shall not include information about, or evaluate Applicant's business decisions with respect to its Application, Applicant's designed service, customer demand for service, or quality of Applicant's service to or from a particular area or Site.

6. Disclosure of Public Records. All records, documents, and electronic data submitted by Applicant in the possession or custody of the City are subject to the provisions of Iowa Code Chapter 22. Disclosure of such records shall be consistent with applicable law.

7. Duration of Approval. The duration of the approval shall not be limited, except that construction of the approved structure or facilities shall be commenced within two (2) years of final approval, including the disposition of any appeals, and diligently pursued to completion.

8. Final Inspection.

a. A certificate of occupancy will only be granted upon satisfactory evidence Applicant's work pursuant to a granted Application substantially complies with approved plans, submissions, and specifications.

b. If it is found Applicant's work does not substantially comply with the approved plans, submissions, and specifications, Applicant shall make all changes required to bring such work into compliance promptly and prior to operation.

9. Limitation of Review for Other Potential Locations or Collocation. The City's review will not:

a. Include evaluating the availability of other potential locations for the placement or construction of a Tower or Transmission Equipment; or

b. Require Applicants to establish other options for Collocation instead of the construction of a new Tower or modification of an existing Tower or existing Base Station that constitute a Substantial Change to an existing Tower or existing Base Station.

10. Transmission Equipment and Technology. The City shall not dictate the type of Transmission Equipment or technology to be used by Applicant or discriminate between different types of infrastructure or technology.

11. Radio Frequency and Environmental Impacts. The City shall not:

a. Deny an Application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions, as provided in 47 U.S.C. §332(c)(7)(B)(iv);

b. Establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality; or

c. Impose environmental testing, sampling or monitoring requirements or other compliance measures for radio frequency emissions from Transmission Equipment that are categorically excluded under FCC rules for radio frequency emissions pursuant to 47.C.F.R. §1.1307(b)(1).

12. Removal. The City shall not require the removal of existing Towers, Base Stations, or Transmission Equipment, wherever located, as a condition to approval of an Application.

13. Emergency Power Systems. The City shall not prohibit the placement of emergency power systems that comply with federal and state environmental requirements.

14. Zoning for Airports and Airspace. The City may administer and enforce airport zoning pursuant to the provisions of Iowa Code Chapter 329 for the protection of navigable airspace.

15. Surety Requirements. The City shall not impose surety requirements, including bonds, escrow, deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused Towers or Transmission Equipment can be removed.

16. Tower Space. The City shall not condition the approval of an Application on Applicant's agreement to:

a. Provide space on or near the Tower, Base Station, or Wireless Support Structure for the City or local governmental or nongovernmental services at less than the market rate for such space, or

b. Provide other services via the structure or facilities at less than the market rate for such services.

17. Historic Properties and Districts. The City may administer and enforce zoning regulations to approve or deny applications for proposed alterations to exterior features of designated local historic landmarks. Applicants shall also comply with federal and state historic property laws.

18. Discrimination. The City shall not discriminate based on the ownership, including ownership by the City, of any property, structure, or Tower when promulgating rules or procedures for siting wireless facilities or for evaluating Applications.

19. Remedies. Applicants and the City may bring claims related to this ordinance to any court of competent jurisdiction.

5-1V-8 APPLICATION REVIEW FOR APPLICATIONS IDENTIFIED AS ELIGIBLE FACILITIES REQUESTS.

1. Application for Eligible Facilities Requests. For those Applications identified by Applicant and determined by the City to be an Eligible Facilities Request, the Application shall be limited to the information necessary for the City to consider whether an Application is an Eligible Facilities Request. The Application may not require Applicant to demonstrate a need or business case for the proposed modification.

2. Type of Review. Upon receipt of an Application for an Eligible Facilities Request pursuant to this Chapter, the City Manager or the City Manager's Designee shall review such Application to determine whether the Application so qualifies.

3. Timeframe for Review. Within sixty (60) days of the date Applicant submits an Application seeking approval under this Chapter, the City Manager or the City Manager's Designee shall approve the Application unless it determines the Application is not covered by this Chapter.

4. Tolling of the Timeframe for Review. The 60-day review period begins to run when the Application is filed with the City, and may be tolled only by agreement between the City and Applicant, or in cases where the City Manager or the City Manager's Designee determines that the Application is incomplete. The timeframe for review is not tolled by a moratorium on the review of Applications.

a. To toll the timeframe for incompleteness, the City must provide written notice to Applicant within thirty (30) days of receipt of the Application, specifically delineating all missing documents or information required for the Application.

b. The timeframe for review begins running again when Applicant makes a supplemental submission in response to the City's notice of incompleteness.

c. Following a supplemental submission, the City will notify Applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in Paragraph 4 of this Section IV. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

d. The City shall make its final decision to approve or disapprove the Application in writing within the timeframe provided (accounting for any tolling).

5. Interaction with Section 332(c)(7) of the United States Federal Code. If the City determines Applicant's request is not an Eligible Facilities Request, the City shall notify Applicant in writing the Application is being construed otherwise and the basis of its determination. The timeframes under Sections V and VI will begin to run from the issuance of the City's decision that the Application is not an Eligible Facilities Request. To the extent such information is necessary, the City may request additional information from Applicant to evaluate the Application under Sections V and VI, pursuant to the limitations applicable to said Sections.

6. Failure to Act. In the event the City fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until Applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the Application has been deemed granted.

5-1V-9 APPLICATION REVIEW FOR APPLICATIONS IDENTIFIED FOR NEW TOWER CONSTRUCTION.

1. Application. For those Applications identified by Applicant and determined by the City to propose construction of a new Tower, Applicant shall submit the necessary copies and attachments of the Application to the City Manager or the City Manager's Designee and comply with applicable local ordinances concerning land use and the appropriate permitting processes.

2. Explanation for Proposed Location. Notwithstanding the provisions of Section 5-1V-7(9), the City may require Applicant to provide an explanation regarding the reason for choosing the proposed location for construction of a new Tower and the reason Applicant did not choose Collocation. The explanation shall include a sworn statement from an individual who has responsibility over placement of the Tower attesting that Collocation within the area determined by Applicant to meet Applicant's radio frequency engineering requirements for the placement of a site would not result in the same mobile service functionality, coverage, and capacity, is technically infeasible, or is economically burdensome to Applicant.

3. Timeframe for Review. Within one hundred fifty (150) days of the date on which Applicant submits an Application seeking approval to construct a new Tower, the City shall approve or deny the Application, unless another date is specified in a written agreement between the City and Applicant. The City Manager or the City Manager's Designee shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with Iowa Code Chapter 8C.

4. Tolling of the Timeframe for Review. The 150-day review period begins to run when the Application is filed, and may be tolled only by agreement between the City and Applicant, or in cases where the City Manager or the City Manager's Designee determines that the Application is incomplete. The City Manager or the City Manager's Designee shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with this Chapter. The timeframe for review is not tolled by a moratorium on the review of Applications.

a. To toll the timeframe for incompleteness, the City must provide written notice to Applicant within thirty (30) days of receipt of the Application, specifically delineating all missing documents or information required for the Application. The City's timeframe to review is tolled beginning on the date the notice is sent.

b. The City's timeframe of one hundred fifty (150) days for review begins running again when the Applicant makes a supplemental submission in response to the City's notice of incompleteness.

c. The City's 150-day timeframe for review does not toll if the City requests any information the City may not lawfully consider pursuant to the provisions of Iowa Code Section 8C.3.

d. Following a supplemental submission, the City will notify Applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in Paragraph 4 of this Section V. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

e. The City shall make its final decision to approve or disapprove the Application in writing within the timeframe provided (accounting for any tolling).

5. Failure to Act. In the event the City fails to approve or deny a request seeking approval under this Section V within the timeframe for review (accounting for any tolling), the request shall be deemed granted.

5-1V-10 APPLICATION REVIEW FOR APPLICATIONS IDENTIFIED FOR THE INITIAL PLACEMENT OR INSTALLATION OF TRANSMISSION EQUIPMENT ON WIRELESS SUPPORT STRUCTURES, MODIFICATION OF AN EXISTING TOWER OR EXISTING BASE STATION THAT CONSTITUTES A SUBSTANTIAL CHANGE, OR OTHER REQUESTS FOR CONSTRUCTION OR PLACEMENT OF TRANSMISSION EQUIPMENT THAT DO NOT CONSTITUTE ELIGIBLE FACILITIES REQUESTS.

1. Application. For those Applications identified by Applicant and determined by the City to be for the Initial Placement or Installation of Transmission Equipment on Wireless Support Structures, modification of an existing Tower or existing Base Station that constitutes a Substantial Change, or other requests for construction or placement of Transmission Equipment that do not constitute Eligible Facilities Requests an Eligible Facilities Request, Applicant shall submit the necessary copies and attachments of the Application to the City Manager or the City Manager's Designee and comply with applicable local ordinances concerning land use or regulations concerning land use and zoning and the appropriate local permitting processes.

2. Timeframe for Review. Within ninety (90) days of the date on which Applicant submits an Application seeking approval to construct a new Tower, the City shall approve or deny the Application, unless another date is specified in a written agreement between the City and Applicant. The City Manager or the City Manager's Designee shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with Iowa Code Chapter 8C.

3. Tolling of the Timeframe for Review. The 90-day review period begins to run when the Application is filed, and may be tolled only by agreement by the City and Applicant, or in cases

where the City Manager or the City Manager's Designee determines that the Application is incomplete. The City Manager or the City Manager's Designee shall review the Application for conformity with applicable local zoning regulations, building permit requirements, and consistency with this Chapter. The timeframe for review is not tolled by a moratorium on the review of Applications.

a. To toll the timeframe for incompleteness, the City must provide written notice to Applicant within thirty (30) days of receipt of the Application, specifically delineating all missing documents or information required in the Application and the City's timeframe to review is tolled beginning the date the notice is sent.

b. The City's timeframe of ninety (90) days for review begins running again when Applicant makes a supplemental submission in response to the City's notice of incompleteness.

c. The City's 90-day timeframe for review does not toll if the City requests information regarding any of the considerations the City may not consider as described in Iowa Code Section 8C.3.

d. Following a supplemental submission, the City will notify Applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in Paragraph 4 of this Section VI. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

e. The City shall make its final decision to approve or disapprove the Application in writing within the timeframe.

4. Failure to Act. In the event the City fails to approve or deny a request seeking approval under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted.

5-1V-11 PROPRIETARY LEASING OF CITY OWNED OR CONTROLLED PROPERTY.

1. Leasing of City Owned or Controlled Property. The City reserves all rights to leasing of City owned or controlled property, but shall offer the market rate value for use of the property.

2. Lease Term. Leases shall be for no less than twenty (20) years, but all or a portion of the property may be subject to release for public purposes after fifteen (15) years.

3. Appraisal Process for Market Value Determination. If the City and Applicant cannot agree on the market rate for a lease on real property or structures owned by the City, the City and Applicant shall follow the process set forth in Iowa Code Section 8C.6.

5-1V-11 REMOVAL OF ABANDONED WIRELESS COMMUNICATION FACILITIES. There shall be a rebuttable presumption that any Tower, Transmission Equipment, and/or Wireless Facilities regulated pursuant to this Chapter that are not operated for a continuous period of twelve

(12) months shall be considered abandoned. This presumption may be rebutted by showing the same serves as auxiliary, backup, or emergency equipment or is otherwise not abandoned. For any Tower, Transmission Equipment, and/or Wireless Facilities deemed abandoned, all related equipment shall be removed within ninety (90) days following receipt of notice from the City to remove the same. Irrespective of any agreement between them to the contrary, the owner or operator of the abandoned facilities and the owner of the land or building to which they are affixed, shall be jointly and severally responsible for their removal. If the abandoned Tower, Transmission Equipment, and/or Wireless Facilities are not removed within ninety (90) days of written notice from the City, the City may remove the same and recover from the owner or operator of the same, or the owner of the land or building, all costs incurred by the City as a result, including reasonable attorneys' fees and court costs. If there are two (2) or more users of a Tower, Transmission Equipment, and/or Wireless Facility, the same shall not be considered abandoned until all users cease using the same.

(Ord. 1141, Passed May 7, 2018)