



**CITY OF LA VISTA  
8116 PARK VIEW BOULEVARD  
LA VISTA, NE 68128  
P: (402) 331-4343**

**PLANNING COMMISSION AGENDA  
APRIL 15, 2021 – 6:30 P.M.**

- 1. *Call to Order***
- 2. *Approval of Meeting Minutes – February 18, 2021***
- 3. *Old Business***
- 4. *New Business***
  - A. *Conditional Use Permit – 12806 Emiline Street – American Heritage Firearms, LLC.***
    - i. Staff Report – Cale Brodersen
    - ii. Public Hearing
    - iii. Recommendation
  - B. *Zoning Ordinance Amendment – Section 7.11 (Wireless Telecommunications Facilities)***
    - i. Staff Report – Cale Brodersen
    - ii. Public Hearing
    - iii. Recommendation
- 5. *Comments from the Floor***
- 6. *Comments from the Planning Commission***
- 7. *Comments from Staff***
- 8. *Adjournment***

*The public is welcome and encouraged to attend all meetings. If special accommodations are required, please contact City Hall prior to the meeting at (402) 331-4343. A copy of the Open Meeting Act is posted in the Council Chamber. Citizens may address the Planning Commission about items not on the agenda under “comments from the floor”. Comments should be limited to three minutes. We ask for your cooperation in order to provide for an organized meeting.*



**CITY OF LA VISTA  
8116 PARK VIEW BOULEVARD  
LA VISTA, NE 68128  
P: (402) 331-4343**

**PLANNING COMMISSION MINUTES  
FEBRUARY 18, 2021 6:30 P.M.**

The City of La Vista Planning Commission held a meeting on Thursday, February 18, 2021 in the Harold “Andy” Anderson Council Chamber at La Vista City Hall, 8116 Park View Boulevard. Chairman Wetuski called the meeting to order at 6:30 p.m. with the following members present: Mike Krzywicki, Gayle Malmquist, Harold Sargus, Patrick Coghlan, John Gahan, Jason Dale Kathleen Alexander, Mike Circo, and Josh Frey. Also, in attendance were Chris Solberg, Deputy Community Development Director; Bruce Fountain, Community Development Director; Cale Brodersen, Assistant City Planner; Meghan Engberg, Permit Technician; and Pat Dowse, City Engineer.

Legal notice of the public meeting and hearing were posted, distributed, and published according to Nebraska law. Notice was simultaneously given to all members of the Planning Commission. All proceedings shown were taken while the convened meeting was open to the attendance of the public.

**1. Call to Order**

The meeting was called to order by Chairman Wetuski at 6:30 p.m. Copies of the agenda and staff reports were made available to the public.

**2. Approval of Meeting Minutes – February 4, 2021**

*Malmquist* moved, seconded by *Sargus*, to approve the February 4, 2021 minutes. **Ayes:** *Krzywicki, Gahan, Coghlan, Frey, Sargus, Wetuski, Dale, Circo, and Malmquist.* **Nays:** *None.* **Abstain:** *Alexander.* **Absent:** *None.* **Motion Carried, (9-0-1)**

**3. Old Business**

None.

**4. New Business**

**A. Zoning Map Amendment – Lots 2 & 3 Gary & Debbie Pink No. 3 – TNT Holdings, LLC**

- i. **Staff Report – Christopher Solberg, AICP:** Solberg stated that TNT Holdings, LLC is requesting to rezone Lots 2 & 3 Gary and Debbie Pink to extend the Planned Unit Development zoning overlay over those lots, which are generally located Southwest of the intersection of Giles Road and West Giles Road. Staff recommends approval of the Zoning Map Amendment to add a Planned Unit Development – Overlay District to Lots 2 and 3 of Gary & Debbie Pink No. 3 with the allowances stated within the staff report, as the request is consistent with the Comprehensive Plan and the Zoning Ordinance.

**ii. Public Hearing; Wetuski opened the public hearing.**

Ken Hahn spoke on behalf of the applicant. He showed the Commission a drawing of the site area that shows Lots 2 and 3 and mentioned that about 3 years ago, Dr. Miyomoto and his wife purchased Lot 3 and put a dental clinic on that lot. He said that they found that even with utilizing every square inch that they could in the building and meeting parking guidelines, it is proving to be inadequate for their practices and would like to provide some additional parking. Hahn said the owners purchased Lot 2 hoping there would be a way for them to be able to use some of that land for parking. He mentioned that Lot 2 is such a narrow lot, that it's hard to find use for that piece of land. The thinking was that if they were to develop this lot in a way where they could put the building on the west end, the parking needed for that would consume a portion of Lot 2, but not all of it. The remainder of the lot would then be used for parking and would help with the additional need on Lot 3.

Krzywicki mentioned the parking shown in the plan and the diagonal part of the roadway and asked if that was existing or new.

Hahn said that it's all existing.

Krzywicki mentioned that when he drove by there today, there were 2 cars parked on the road and asked if they would start utilizing the parking to the left of the road.

Hahn said that was correct.

Krzywicki asked if it would make more sense to have the road moved so people don't have to cross the street.

Hahn said that he wasn't sure if he'd be able to give a definitive answer for that and that it goes beyond what they are trying to achieve. He said that they are putting in a sidewalk and there will also be a crosswalk as well.

Jill McCormick addressed the Commission and said that she lives directly across the Burlington Northern line near the project site. She said that the applicant had mentioned there was another building to be constructed to the west and asked what type of use would be included. She also asked if it was the Rocket Carwash that was being advertised nearby.

Solberg said that the Rocket Carwash, is proposed for a site to the west of this site, however, no plans or applications have been submitted to the City for that project at this time.

McCormick said that the Planning Commission Public Hearing sign was placed directly under the Rocket Carwash sign and that's why she thought they were here tonight. Solberg indicated that the sign was misplaced and that would be corrected.

Hahn said that the building that is shown on the plans will be a professional office building.

McCormick said that all of this is directly north of her property and her biggest concern is the lighting and the effect it will have on Haunted Hollow which they own and operate. She mentioned that the dentist office has one light along the access road that is turned toward the railroad tracks and their driveway and shines directly into their customers' faces. She just wants everyone to know, that as La Vista is developing that area, there is a residence still right there.

**Wetuski closed the Public Hearing.**

Sargus mentioned the parking lot light and asked if there is a code on where the light must be placed.

Hahn said that there is a requirement that they must follow the lighting design guidelines that are in the Gateway Corridor District and the lights they have there are in compliance with those requirements.

Solberg said that projects in this area do go through design review and that the proposed Rocket Carwash will be required to as well when it is submitted. The car wash also will be required to get a Conditional Use Permit and they will have to go before the Planning Commission and have a public hearing for that request, as well. He said that all these properties are in the Gateway Corridor Overlay District, which requires a specific type of lighting fixture, which is "dark sky compliant". Solberg said that it was selected back in 2004, when the original guidelines were developed. The topography down to the Haunted Hollow property is downward sloping, so there are some angle issues with the light. He then said that when they go to work with the architect on the proposed new building, that they can look into any existing issues as well.

Frey asked if there could be a requirement to provide screening with trees or anything else to help with the light bleeding onto other properties.

Solberg said they can look into it with their architect to see what all could be done, but there isn't much room due to the railroad right-of-way. He said that they can look into ways to keep that lighting level down and verify that there aren't sconces shining light onto the adjacent properties.

- iii. **Recommendation:** Sargus moved, seconded by Malmquist, to recommend approval of the Zoning Map Amendment to add a Planned Unit Development – Overlay District to Lots 2 and 3 of Gary & Debbie Pink No. 3 with the allowances stated within the staff report, as the request is consistent with the Comprehensive Plan and the Zoning Ordinance. **Ayes:** *Wetuski, Krzywicki, Gahan, Dale, Circo, Alexander, Frey, Sargus, and Malmquist.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *None.* **Motion Carried, (9-0).**



**B. Planned Unit Development Site Plan – Lots 2 & 3 Gary & Debbie Pink No. 3, TNT Holdings, LLC**

- i. **Staff Report- Christopher Solberg, AICP:** Solberg stated that TNT Holdings, LLC and VNT, LLC, is requesting a PUD site plan amendment to allow for a development with shared parking on Lots 2 & 3 Gary and Debbie Pink No. 3. Staff recommends approval of the Planned Unit Development Site Plan for Lots 2 and 3 Gary and Debbie Pink No. 3, with the allowances stated within the staff report, contingent on the resolution of any issues mentioned in this staff report, as the request is consistent with the Comprehensive Plan and the Zoning Ordinance.

- ii. **Public Hearing: Wetuski opened the Public Hearing.**

**Wetuski closed the Public Hearing as no members of the public came forward.**

- iii. **Recommendation:** Malmquist moved, seconded by Dale, to recommend approval of the Planned Unit Development Site Plan for Lots 2 and 3 Gary & Debbie Pink No.3, with the allowances stated within the staff report, contingent on the resolution of any issues mentioned in this staff report, as the request is consistent with the Comprehensive Plan and the Zoning Ordinance. **Ayes: Wetuski, Krzywicki, Gahan, Dale, Circo, Alexander, Frey, Sargus, and Malmquist. Nays: None. Abstain: None. Absent: None. Motion Carried, (9-0).**

**C. Replat- Lots 1 & 16 Harrison Hills – Streck, Inc.**

- i. **Staff Report – Christopher Solberg, AICP:** Solberg stated that Streck, Inc. has applied to replat Lots 1 & 16 of Harrison Hills to be replatted as Lots 1 and 2 Harrison Hills Replat 7. This will consolidate Lot 16 into Lot 1 Harrison Hills and the division of Lot 1 Harrison Hills into two lots for the development of multi-family housing units. Staff recommends approval of the replat of Lots 1 and 16 Harrison Hills, being replatted at Lots 1 and 2 Harrison Hills Replat 7, contingent on the resolution of the issues mentioned in this staff report, as the request is consistent with the Comprehensive Plan and the Subdivision Regulations.

Caleb Snyder, the project engineer, spoke on behalf of the applicant. He said that they are seeking approval of a replat for Lots 1 and 2 for the Streck Housing project. He mentioned that they were here a little over a month ago seeking an amendment to the Future Land Use Map and Rezoning and this was the next step in the process. He said that he was there to answer any questions the Commission may have.

- ii. **Recommendation:** Circo moved, seconded by Alexander to recommend approval for the replat of Lots 1 and 16 as according to the staff report. **Ayes: Wetuski, Krzywicki, Gahan, Dale, Circo, Alexander, Frey, Sargus, and Malmquist. Nays: None. Abstain: None. Absent: None. Motion Carried, (9-0).**

**D. Planned Unit Development Site Plan – Lots 1 & 16 Harrison Hills – Streck, Inc.**

- i. **Staff Report – Christopher Solberg, AICP:** Solberg stated the applicant, Streck, Inc. is requesting an approval of a revised PUD Site Plan to allow for the construction and operation of a multi-family housing development on Lot 1 Harrison Hills Replat 7. The PUD Amendment request will allow for the development of an 84-unit multi-family housing development on roughly 3.03 acres. Staff recommends approval of the Planned Unit Development Site Plan Amendment for Lots 1 and 2 Harrison Hills Replat 7 with allowances for a reduction of the required garage stalls per unit and a reduction in the required site square footage per unit, contingent on the resolution of the issues mentioned in this staff report, as the request is consistent with the Comprehensive Plan and the Zoning Ordinance.

- ii. **Public Hearing: Wetuski opened the Public Hearing.**

Dale mentioned that when this project was brought forward in December, they were told that these units were not going to be solely for Streck employees, although that is the primary goal. He asked with the parking spaces being reduced, if there was additional parking that could be used with the existing Streck building.

Snyder said that the reduction in parking is for covered parking and that they are above the required number for parking otherwise.

Zach Reinhardt, the project manager, spoke on behalf of the applicant. He said that if Streck employees needed to overflow into the parking lot they could, but it shouldn't be an issue.

Krzywicki brought up the recent heavy snow and that he's noticed that some of the parking lots around the City have snow sitting in the parking spaces, which reduces the number of spaces available and asked if the City has any requirements to remove snow from required parking spaces.

Solberg said not from private required parking spaces, but there may be something for spots in public ways. He said that one thing about this PUD is that it has shared

parking and both sites exceed their parking minimums, so there should be plenty of parking, even if a few spots are taken up by the snow mounds.

Krzywicki said that the reason he brought it up is because he has noticed that some businesses have cars parked on the street due to parking overflow from spots being taken up by the snow. He mentioned that if there is nothing in the ordinance, that businesses should be reminded that they must keep required parking spots clear.

Solberg said staff can look into it. He continued to state that any areas with public parking that don't have actual spaces available, causing people to park illegally, the police have been very diligent on chasing those down. This is done to make sure they are cleared for Public Works to be able to plow snow from those spaces along the street. Solberg went on to state that adjustments in regulations is something staff can look into to see how other areas in the Northern United States handle it.

Fountain said that most developments are probably overparked in terms of required parking and that if the City got complaints that we should be able to go to the development and remind them that they must meet the minimum required parking.

Solberg said that depending on funding, the City is hoping to do a complete zoning ordinance update in the next couple of years and would be able to address this further if it's an issue.

**Wetuski closed the Public Hearing as no members of the public came forward.**

- iii. **Recommendation:** Sargus moved, seconded by Gahan, to recommend approval of the Planned Unit Development Site Plan Amendment for Lots 1 and 2 Harrison Hills Replat 7 with allowances for a reduction of the required garage stalls per unit and a reduction in the required site square footage per unit, contingent on the resolution of the issues mentioned in the staff report, as the request is consistent with the Comprehensive Plan and the Zoning Ordinance. **Ayes: Wetuski, Krzywicki, Gahan, Dale, Circo, Alexander, Frey, Sargus, and Malmquist. Nays: None. Abstain: None. Absent: None. Motion Carried, (9-0).**

#### **E. Conditional Use Permit – Portion of Lot 1 Harrison Hills – Streck, Inc.**

- i. **Staff Report – Christopher Solberg, AICP:** Solberg stated the applicant, Streck Inc., is requesting approval of a Conditional Use Permit to allow for the construction and operation of a multi-family housing development on the proposed Lot 1 Harrison Hills Replat 7. The CUP is to allow for the construction of a multi-family housing

development on the proposed Lot 1 Harrison Hills Replat 7 generally located South of the intersection of S. 117<sup>th</sup> St. and Emiline St. Staff recommends approval of the Conditional Use Permit for Lot 1 Harrison Hills Replat 7 contingent on the resolution of the issues mentioned in this staff report, as the request is consistent with the Comprehensive Plan and Zoning Ordinance.

ii. **Public Hearing: Wetuski opened the public hearing.**

**Wetuski closed the public hearing as no members of the public came forward.**

iii. **Recommendation:** Malmquist moved, seconded by Gahan, to recommend approval of the Conditional Use Permit for Lot 1 Harrison Hills Replat 7 contingent on the resolution of the issues mentioned in this staff report, as the request is consistent with the Comprehensive Plan and Zoning Ordinance. **Ayes: Wetuski, Krzywicki, Gahan, Dale, Circo, Alexander, Frey, Sargus, and Malmquist. Nays: None. Abstain: None. Absent: None. Motion Carried, (9-0).**

**F. Final Plat – La Vista City Centre Replat 4 – La Vista City Centre, LLC**

i. **Staff Report – Christopher Solberg, AICP:** Solberg stated that the final Plat for La Vista City Centre Replat 4 was approved by City Council on March 3, 2020. However, due to development delays related to the current pandemic, the Final Plat was never signed and recorded with the Sarpy County Register of Deeds. As per Section 3.04.06 of the Subdivision Regulations, final plats that are not recorded within 90 days of approval by the City Council are null and void. As such the plat will need to go through the whole approval process to be reapproved. As no regulations have changed since the prior approval, staff recommends reapproval of the La Vista City Centre Replat 4 Final Plat, subject to satisfaction of all applicable requirements, including without limitation, notice, hearing, recording of redevelopment agreement amendment, subdivision agreement amendment, and applicable property conveyances.

ii. **Recommendation:** Krzywicki moved, seconded by Frey to recommend approval of the La Vista City Centre Replat 4 Final Plat, subject to satisfaction of all applicable requirements, including without limitation, notice, hearing, recording of redevelopment agreement amendment, subdivision agreement amendment, and applicable property conveyances. **Ayes: Wetuski, Krzywicki, Gahan, Dale, Circo, Alexander, Frey, Sargus, and Malmquist. Nays: None. Abstain: None. Absent: None. Motion Carried, (9-0).**

**5. Comments from the Floor**

McCormick addressed the Commission again and discussed a traffic issue at Old Giles Road and S. 120<sup>th</sup> St. She said that the intersection bottlenecks due to traffic backup at the light at 120<sup>th</sup> and Giles. She asked if a traffic study could be done because the light doesn't seem to stay green long enough to let traffic through.

Dowse said that it's a situation they continue to monitor and are looking at ways that they can improve it.

#### **6. Comments from the Planning Commission**

**None.**

#### **7. Comments from Staff**

Fountain said that the 4Seams CUP was approved by the City Council. He said that staff also met with the applicant and the Fire Marshall and the building inspectors and that the issues have been resolved and will hopefully be opening soon.

Solberg said that we do not have Planning Commission meetings planned for March 4<sup>th</sup> or 18<sup>th</sup> as there currently are no pending applications slated for those meetings. Staff will keep the Commission posted if anything changes. He also mentioned that NPZA will be holding a Spring workshop virtually on March 12<sup>th</sup> and to let him know if they are interested in attending.

#### **8. Adjournment**

Wetuski adjourned the meeting at 7:14 p.m.

Reviewed by Planning Commission:

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Planning Commission Secretary

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Planning Commission Chair

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Date



## **AGENDA ITEM 4A**

**Conditional Use Permit—12806 Emiline Street—  
American Heritage Firearms, LLC**





**CITY OF LA VISTA  
PLANNING DIVISION  
RECOMMENDATION REPORT**

CASE NUMBERS: PCUP21-0002;

FOR HEARING OF: APRIL 15, 2021  
REPORT PREPARED ON: MARCH 30, 2021

**I. GENERAL INFORMATION**

**A. APPLICANT:**

American Heritage Firearms, LLC  
Attn: Brian Lichter  
12806 Emiline Street  
Omaha, NE 68138

**B. PROPERTY OWNER:**

Brian & Jennifer Lichter  
12806 Emiline Street  
Omaha, NE 68138

**C. LOCATION:** 12806 Emiline Street, Omaha, NE 68138.

**D. LEGAL DESCRIPTION:** Lot 492 Millard Highlands South Replat.

**E. REQUESTED ACTION(S):** Approval of a Conditional Use Permit for a gunsmithing home occupation.

**F. EXISTING ZONING AND LAND USE:** R-1 Single-Family Residential.

**G. PURPOSE OF REQUEST:** Allow for the operation of a gunsmithing business in a portion of the garage in the single-family home located at 12806 Emiline Street.

**H. SIZE OF SITE:** Approximately .25 acres.

## II. BACKGROUND INFORMATION

### A. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:

<u>Direction From Subject Property</u>	<u>Future Land Use Designation</u>	<u>Current Zoning Designation</u>	<u>Surrounding Development</u>
North	Low-Density Residential (Omaha)	R-2 Single-Family Residential District (Low Density) (Omaha)	Residential neighborhood in the City of Omaha/Douglas County
East	Medium-Density Residential	R-1 Single-Family Residential	Single-family homes; Millard Highlands South Neighborhood
South	Medium-Density Residential; Parks & Recreation	R-1 Single-Family Residential	Single-family homes; Millard Highlands South Neighborhood
West	Medium-Density Residential	R-1 Single-Family Residential	Single-family homes; Millard Highlands South Neighborhood

### B. RELEVANT CASE HISTORY: N/A

### C. APPLICABLE REGULATIONS:

1. Section 5.06 of the Zoning Regulations – R-1 Single-Family Residential
2. Article 6 of the Zoning Regulations – Conditional Use Permits
3. Section 7.10 of the Zoning Regulations – Home Occupations
4. Regulations of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the requirements of the Federal Firearms License (FFL)

## III. ANALYSIS

### A. COMPREHENSIVE PLAN: N/A

### B. OTHER PLANS: N/A.

### C. TRAFFIC AND ACCESS:

1. The property has driveway access to Emiline Street on the southern edge of the property.

### D. UTILITIES: N/A

### E. PARKING REQUIREMENTS:

1. Client parking will be limited to the driveway on the property.



#### **IV. REVIEW COMMENTS:**

- A.** In order to operate a gunsmithing business and sell firearms, the applicant must maintain a Federal Firearms License (FFL) at all times and adhere to the rules and regulations of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The process to obtain an FFL includes a background check, interview, and inspection. If the applicant's FFL lapses, expires, or terminates, the Conditional Use Permit authorizing the gunsmithing Home Occupation will also terminate. Confirmation of local zoning approval (a valid conditional use permit) is part of the process for the applicant to obtain his FFL. Any inspection reports issued by the ATF to the applicant shall be submitted to the La Vista Community Development Department immediately upon receipt.
- B.** The Fire Marshal reviewed the application and has no objections with the Conditional Use Permit request considering the following conditions are included in the draft CUP attached as Exhibit "D":
1. Owner shall comply with all sections of the International Fire Code, and NFPA 495 (2010) Sections 14.3-14.5 regarding the storage of small arms ammunition and its components in an R occupancy.
  2. Owner shall comply (and shall ensure that all, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local laws, regulations, or other requirements, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
  3. Fire escape routes shall be properly designated.
  4. There will be no test firing or discharge of the firearms on the premises.
- C.** As the proposed home-occupation would result in customers coming to the home, it is considered a "Major Home Occupation" per the La Vista Zoning Ordinance. One requirement of Major Home Occupations is that a minimum of seventy-five percent (75%) of the households within two hundred feet (200') of the proposed home occupation shall indicate no objections, in writing, to the operation of such home occupation. The applicant has provided the City with a "no objections form" that includes signatures from 75% of the required surrounding properties. This "No Objections Form" satisfies the City's requirement.

- E. All firearms on the premises shall be stored in acceptable safes while they are not being worked on or looked at by a prospective buyer.
- F. Additional information about the proposed use is included in the "Operating Statement" as an attachment to the Draft Conditional Use Permit attached to this staff report as Exhibit "E".

**V. STAFF RECOMMENDATION – CONDITIONAL USE PERMIT:**

Staff recommends approval of the Conditional Use Permit for Lot 492 Millard Highlands South Replat, with the requirements outlined in this staff report, as the request is consistent with La Vista's Comprehensive Plan and Zoning Ordinance.

**VI. ATTACHMENTS TO REPORT:**

- A. Vicinity Map
- B. Review Letters
- C. Letter of Good Standing – Nebraska Secretary of State
- D. Draft Conditional Use Permit

**VII. COPIES OF REPORT SENT TO:**

- A. Brian Lichter, American Heritage Firearms, LLC
- B. Pat Lichter, American Heritage Firearms, LLC
- C. Public Upon Request



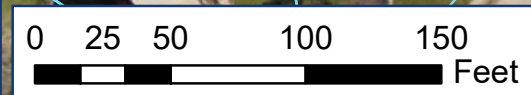
Prepared by: Assistant Planner



Community Development Director

4/8/21  
Date





2/16/2021 CB







March 2, 2021

American Heritage Firearms, LLC  
Attn: Brian Lichter  
12806 Emiline Street  
Omaha, NE 68138

RE: Conditional Use Permit – Initial Review  
Lot 492 Millard Highlands South Replat  
Home Occupation – Gunsmithing

Dear Mr. Lichter,

Thank you for your submittal of the above referenced Conditional Use Permit (CUP) application. Staff has reviewed the initial submittal and has provided the following initial comments:

**Section 6.05.10:**

1. Parking related to the proposed use, including parking for customers and deliveries, shall be confined to the driveway. Appointments should be limited in size and schedule as to contain parking to the driveway.

**Section 7.10:**

1. The proposed use shall remain in compliance with Section 7.10 of the La Vista Zoning Ordinance, attached to this letter for your reference. Please confirm that the operation will conform to each of the listed requirements.

**General Comments:**

1. Owner shall forward any and all inspection reports received of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) per the requirements of the Federal Firearms License to the City of La Vista Community Development Department immediately upon receipt.

**City Hall**  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
402.331.4343 P  
402.331.4375 F

**Community Development**  
8116 Park View Blvd.  
402.593.6400 P  
402.593.6445 F

**Library**  
9110 Giles Rd.  
402.537.3900 P  
402.537.3902 F

**Police**  
7701 S. 96th St.  
402.331.1582 P  
402.331.7210 F

**Public Works**  
9900 Portal Rd.  
402.331.8927 P  
402.331.1051 F

**Recreation**  
8116 Park View Blvd.  
402.331.3455 P  
402.331.0299 F

2. Waste material from activities shall be properly disposed of as per all Nebraska Department of Environmental Quality (NDEQ) guidelines and other applicable laws, regulations and requirements as in effect or amended from time to time.
3. Fires escape routes shall be properly designated.
4. Please provide evidence that the owner of the home is also listed as an owner or partner in the business (American Heritage Firearms, LLC) registered with the State of Nebraska.
5. Can you please confirm that you will not be storing or dealing ammunition in relation to the proposed gunsmithing business, as referenced in your operating statement?
6. How many square feet of the garage will be dedicated to the gunsmithing home occupation?
7. A draft Conditional Use Permit is attached to this letter for your reference.

Please submit a response to this letter and to any questions that are posed above. If you are able to address these questions by Thursday, March 11<sup>th</sup>, this request can be reviewed by the Planning Commission on April 1, 2021, and by the City Council on May 4, 2021, pending no delays or obstructions. Please let me know if you have any questions.

Sincerely,



Cale Brodersen  
Assistant Planner  
City of La Vista  
(402) 593-6400  
[cbrodersen@cityoflavista.org](mailto:cbrodersen@cityoflavista.org)

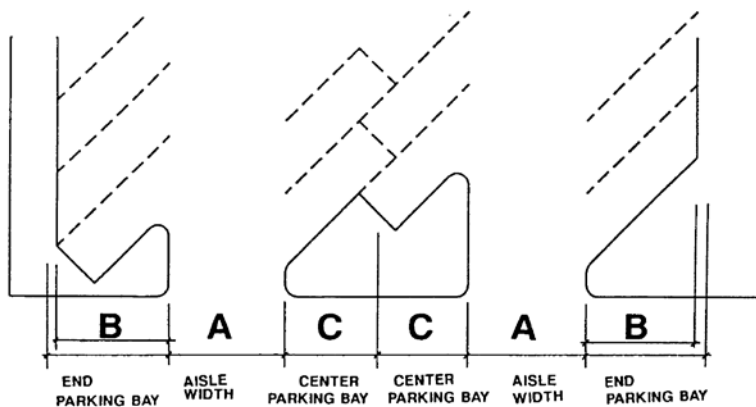
Cc: Bruce Fountain, Community Development Director  
Chris Solberg, Deputy Community Development Director

Enclosures

## Section 7.09 Off-Street Parking Design Criteria

- 7.09.01 Standard parking stall dimensions shall not be less than nine (9) feet by eighteen (18) feet, plus the necessary space for maneuvering into and out of the space. Where the end of the parking space abuts a curbed area at least five (5) feet in width (with landscaping or sidewalk), an overhang may be permitted which would reduce the length of the parking space by two (2) feet. Such overhang shall be measured from the face of the curb. For standard parking lots, minimum dimensions shall be as follows:

	Parking Configuration		
	90-degree	60-degree	45-degree
<b>Aisle Width (A)</b>			
One-way traffic	----	18 feet	14 feet
Two-way traffic	24 feet	20 feet	20 feet
<b>End Parking Bay Width (B)</b>			
Without overhang	18 feet	20 feet	19 feet
With overhang	16 feet	18 feet	17 feet
<b>Center Parking Bay Width (C)</b>	18 feet	18 feet	16 feet



- 7.09.02 Minimum dimensions for a parallel parking space shall be nine (9) feet by twenty-three (23) feet.

- 7.09.03 Minimum parking dimensions for other configurations or for parking lots with compact car spaces shall be determined by the Planning Commission and City Council upon recommendation of the City Engineer.

## Section 7.10 Home Occupations

The following are the minimum standards required for a Home Occupation:

- 7.10.01 *No external evidence of the home occupation with the exception of one unlighted nameplate of not more than two (2) square foot in area attached flat against the building located on local or collector streets. However, four (4) square feet in area attached flat against the building located on arterial streets.*
- 7.10.02 Advertising displays and advertising devices displayed through a window of the building shall not be permitted.
- 7.10.03 No more than twenty-five percent (25%) of the home, *not to exceed four hundred (400) square feet*, can be used for the home occupation, *except for Child Care Home. This percentage is inclusive of any detached accessory buildings used for the Home Occupation.*
- 7.10.04 Home occupations shall employ no more than one full-time or part-time employee on-site other than the residents of the dwelling unit, provided that one off-street parking space is made available and used by that non-resident employee.
- 7.10.05 Unless expressly permitted by a Conditional Use Permit, no retail sales are permitted from the site.
- 7.10.06 No outdoor storage is permitted.
- 7.10.07 Additional off-street parking may be required for the business.
- 7.10.08 *If home occupation is for a business office for services rendered at another location then not more than two (2) business or employee vehicles parked on or adjacent to the home occupation property at any one time; provided only one said vehicle may be allowed to park on street right-of-way. Construction or maintenance equipment shall not be stored on the property other than in an enclosed garage; provided one*

*(1) piece of equipment shall be counted as one (1) of the two (2) business or employee vehicles allowed. For the purpose of enforcement of the home occupation provisions of this ordinance, a piece of construction equipment parked on a trailer shall be counted as a single business vehicle. A trailer being pulled by another vehicle, however, shall be counted as two (2) vehicles. Personal vehicles of occupants of the residential dwelling shall not be included in the count of number of business or employee vehicles.*

- 7.10.09 No offensive noise, vibration, smoke, odor, heat, or glare shall be noticeable at or beyond the property line.
- 7.10.10 *A Home Occupation License shall be required for Home Occupation I uses.*
- 7.10.11 *A Conditional Use Permit is required, except for Home Occupation II uses and Child Care Homes.*
- 7.10.12 *Child Care Homes and Child Care Centers shall require a certificate (CRED 9911) signed by the State of Nebraska Fire Marshall.*
- 7.10.13 All fees shall be paid in accordance with the Master Fee Schedule.
- 7.10.14 All businesses related to Child Care Homes and Child Care Centers shall be in accordance with Nebr. R. R. S. 1943, Sec. §71-1911. (**Ordinance No. 884, 11-19-02**)

**American Heritage Firearms, LLC**  
**12806 Emiline Street**  
**Omaha, NE 68138**  
**402-681-0300**

Cale,

In response to your letter dated March 2, 2021, we submit the following:

**Regarding Section 6.05.10:**

We understand the parking requirement limited to the driveway.

**Regarding Section 7.10:**

We will conform the each of the listed requirements as detailed below.

- 1) We will forward inspection reports from the ATF to the City of LaVista Immediately upon receipt.
- 2) Waste materials shall be properly disposed per NDEQ guidelines and other applicable laws. We expect to have minimal waste and intend to recycle when appropriate.
- 3) Fire escape routes from the garage (operation area) will be properly designated.
- 4) I, Brian D. Lichter, am listed as an owner with American Heritage Firearms, LLC and am also listed as an owner of the home at 12806 Emiline Street. Although the change has been made within the organization (American Heritage Firearms), the change has not been updated with the Secretary of State. Once the update is reflected on the SOS website, a copy will be provided for verification.
- 5) We will NOT be dealing in ammunition. Per our license through the ATF, it is not allowed.
- 6) Approximately 33 square feet will be utilized for the business.

Should you have additional questions, please let me know.

Regards,



Brian Lichter



# STATE OF NEBRASKA

United States of America,     } ss.  
State of Nebraska               }

Secretary of State  
State Capitol  
Lincoln, Nebraska

I, Robert B. Evnen, Secretary of State of the  
State of Nebraska, do hereby certify that

## AMERICAN HERITAGE FIREARMS LLC

was duly formed under the laws of Nebraska on June 11, 2020;

all fees, taxes, and penalties due under the Nebraska Uniform Limited  
Liability Company Act or other law to the Secretary of State have been paid;

the Company's most recent biennial report required by section 21-125 has  
been filed by the Secretary of State;

the Secretary of State has not administratively dissolved the company;

the Company has not delivered to the Secretary of State for filing a Statement  
of Dissolution;

a Statement of Termination has not been filed by the Secretary of State.

*This certificate is not to be construed as an endorsement,  
recommendation, or notice of approval of the entity's financial  
condition or business activities and practices.*

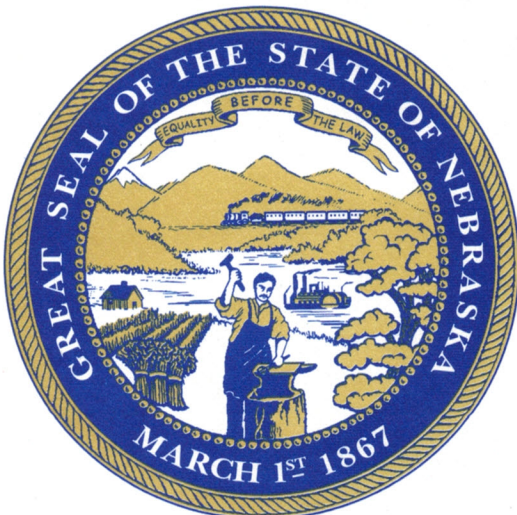
In Testimony Whereof,

I have hereunto set my hand and  
affixed the Great Seal of the  
State of Nebraska on this date of

February 3, 2021

*Robert B. Evnen*

Secretary of State



**NEBRASKA SECRETARY OF STATE ♦ ROBERT B. EVNEN**  
1201 N STREET, SUITE 120 • LINCOLN, NE • 68508  
**BUSINESS SERVICES DIVISION**

**Corporations**  
P.O.BOX 94608  
LINCOLN, NE 68509  
(402) 471-4079  
[sos.corp@nebraska.gov](mailto:sos.corp@nebraska.gov)

**Uniform Commercial Code**  
P.O.BOX 95104  
LINCOLN, NE 68509  
(402) 471-4080  
[sos.ucc@nebraska.gov](mailto:sos.ucc@nebraska.gov)

**Notary**  
P.O.BOX 95104  
LINCOLN, NE 68509  
(402) 471-2558  
[sos.notary@nebraska.gov](mailto:sos.notary@nebraska.gov)

AMERICAN HERITAGE FIREARMS LLC  
12806 EMILINE ST  
OMAHA, NE, 68138  
United States

Receipt Number: 210126145410997-653617

Receipt Date: February 03, 2021

The following details your transaction(s) with the Secretary of State's Office.

Transactions posted to this receipt:

Entity Name / Filing Number	Type of Filing	Amount
AMERICAN HERITAGE FIREARMS LLC	Good Standings	\$ 0.00
	Total Amount:	\$ 0.00

# **City of La Vista Conditional Use Permit**

## **Conditional Use Permit for Home Occupation (Gunsmith)**

This Conditional Use Permit issued this \_\_\_\_ day of \_\_\_\_\_, 2021, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska (“City”) to, American Heritage Firearms, LLC (“Owner”), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to locate and operate a home occupation (Gunsmith) in a single-family dwelling at 12806 Emiline Street upon the following legally described property of land within the City of La Vista zoning jurisdiction:

Lot 492 Millard Highlands South Replat, a Subdivision of Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of locating and operating a home occupation (Gunsmith); and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area of the property described herein for a home occupation (Gunsmith), said use hereinafter being referred to as “Permitted Use or Use”.

### **Conditions of Permit**

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
  - a. Operation of this home occupation must be in accordance with the “Operating Statement” attached to this permit as “Exhibit A”.
  - b. Permitted use will utilize approximately 33 square feet in the garage.
  - c. Hours of operation will generally be from 1:00 p.m. to 3:00 p.m. Tuesdays, and 9:30 a.m. to 11:30 a.m. Saturdays, by appointment only.
  - d. No external evidence of the home occupation is allowed with the exception of one unlighted nameplate of not more than two (2) square feet in area attached flat against the building. Advertising displays and advertising devices displayed through a window of the building shall not be permitted.
  - e. There will be no employees.
  - f. Owner will maintain a Federal Firearms License (FFL) at all times and adhere to the rules and regulations of the ATF.
  - g. Waste material from activities shall be properly disposed of as per all Nebraska Department of Environmental Quality (NDEQ) guidelines and other applicable laws, regulations and requirements as in effect or amended from time to time.
  - h. There will be no test firing or discharge of the firearms on the premises.

- i. Only ten firearms, other than those owned by the property owner, will be on site at any one time. All firearms shall be secured in an acceptable gunsafe whenever the operator is not actively working with the firearms.
  - j. Fires escape routes shall be properly designated.
  - k. There shall be no storage, placement or display of goods or supplies outside described areas relating to permitted use.
  - l. Client parking will consist of owner's driveway.
  - m. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Building Inspector.
  - n. Owner shall comply with all sections of the International Fire Code, and NFPA 495 (2010) Sections 14.3-14.5 regarding the storage of small arms ammunition and its components in an R occupancy.
  - o. Owner shall comply (and shall ensure that all, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local laws, regulations, or other requirements, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
  - p. Owner shall forward any and all inspection reports received of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) per the requirements of the Federal Firearms License to the City of La Vista Community Development Department immediately upon receipt.
  - q. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his/her agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
  - r. At least one individual listed as a legal owner of the property for which this home occupation Conditional Use Permit applies shall also be a legal owner of the business entity registered with the State of Nebraska as American Heritage Firearms, LLC.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
  - a. An annual renewal of a home occupation license and annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
  - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
  - c. All obsolete or unused structures and accessory facilities or materials specifically pertaining to such permitted use shall be removed at owner's expense within twelve (12) months of cessation of the conditional use, if required by the City.
4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as a permitted use hereunder upon the first of the following to occur:
  - a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
  - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
  - c. Owner's breach of any other terms hereof and his/her failure to correct such breach within ten (10) days of City's giving notice thereof.
5. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any

permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.

6. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

### **Miscellaneous**

The conditions and terms of this permit shall be binding upon owner, his/her successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach, and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

**Contact Name and Address:** American Heritage Firearms  
Attn: Brian D. Lichter  
12806 Emiline Street  
Omaha, NE 68138

### **Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pam Buethe  
City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

By: \_\_\_\_\_

Title: owner/operator

Date: \_\_\_\_\_

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public duly commissioned and qualified in and for said County and State, appeared Douglas Kindig and Pamela A. Buethe, personally known by me to be the Mayor and City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Agreement, and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said City.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public duly commissioned and qualified in and for said County and State, appeared Brian Lichter personally known by me to be the owner/operator of American Heritage Firearms LLC, and the identical person whose name is affixed to the foregoing Agreement, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said company.

\_\_\_\_\_  
Notary Public



# **American Heritage Firearms, LLC Plan**

**Owners: Patrick S. Lichter & Brian D. Lichter**

The initial intent of American Heritage Firearms, LLC, was to attempt to obtain one of the 50 caliber machine guns that had been recovered when Lt. A. C. Lichter's P51 Mustang was excavated in the Netherlands in 2006. We both were a part of the family group that were present for the recovery of our father's/grandfather's plane. After trying many avenues of acquiring this gun, we have been informed that the only option is for us to obtain an FFL (Federal Firearms License). That is what we are attempting here.

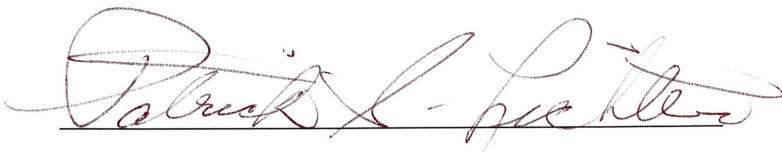
Since the FFL allows for us to sell firearms, we intend to do so to friends and family as well as through a yet-to-be-developed website. We do not anticipate a large volume of sales due to the current shortage of firearms, little to no marketing effort, and a lack of a storefront presence. Furthermore, our license will preclude the sale of ammunition.

Our business will be conducted at 12806 Emiline Street, Omaha, NE 68138. All sales activities shall take place in a specifically modified area of the garage that must be approved by the ATF. The ATF require specific hours of operation to allow for their annual and surprise inspections. Our hours shall be Tuesdays from 1:00pm to 3:00pm and Saturdays from 9:30am to 11:30am. Business will be conducted by appointment only.

Our inventory will be limited to firearms that are pre-purchased by customers who have filled out an ATF Form 4473 and have been approved by the ATF after the 3-day National Criminal Background Check. If they haven't filled out the Form 4473, they must do so and wait the 3 days to return for pickup. Once we have received their purchase from the supplier, we are required to secure the inventory. This is completed by us being on site to sign for and receive the inventory, storing it in a locked safe, specifically utilized for inventory, and the use of a HD camera system with off-site video storage.

We will coordinate and schedule an appointment for the customer to complete their transaction on site. All firearms must be picked up at a licensed FFL location, and purchasers must provide identification and paperwork as approved by the ATF. Transactions are limited and must be by completed by the owners of American Heritage Firearms, LLC.

All deliveries and shipments will be by appointment only. All Covid-19 protocols will be observed wherever possible and masks shall be worn at all times during transactions.



Patrick S. Lichter



Brian D. Lichter

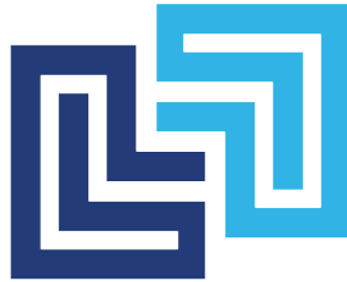


## **AGENDA ITEM 4B**

### **Zoning Ordinance Amendment— Section 7.11 (Wireless Telecommunications Facilities)**



# MEMO



**TO:** Planning Commission Members

**FROM:** Cale Brodersen, Assistant Planner

**DATE:** 3/29/2021

**RE:** Zoning Text Amendment – Section 7.11 (Wireless Telecommunication Facilities)

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## **Agenda Item 4A:**

Staff is proposing amendments to Section 7.11 of the La Vista Zoning Ordinance to address “eligible facilities”, a category of wireless communications facilities for which changes in Federal regulations have warranted an amendment to bring La Vista’s permitting and review process into compliance.

## **Analysis:**

1. On January 9, 2015, the Federal Communications Commission (“FCC”) issued new regulations in response to the interpretation of certain provisions of Section 6409(a) of the federal Middle Class Tax Relief and Job Creation Act of 2012 (“Section 6409”) related to processing applications for wireless communications facilities. Section 6409 requires local jurisdictions to approve certain eligible collocations and modifications to existing wireless communications facilities (“Eligible Facilities”). The FCC’s regulations, in turn, define Section 6409’s key terms to implement Congress’s broader mandate to meet the demand for more wireless services and network infrastructure.
2. The FCC mandates that a local government must act on a Section 6409 requests within 60 days from the date of the application submittal (not including the timeframe for the applicant to respond to completeness items/issues, identified in writing by the City). If the local government fails to take any action during that period, the request is deemed approved at the time the applicant notifies the local government of the deemed approval in writing. La Vista’s current review process for requests for collocation of eligible facilities requires a conditional use permit and public hearings before both the Planning Commission and City Council. It is very challenging to conduct the conditional use permit review and approval process within the required 60 day shot clock due to the statutory public hearing notice requirements.

3. In order to adhere to the FCC mandates, amendments are proposed to Section 7.11 of the Zoning Ordinance. The proposed amendments separate eligible facilities requests from other wireless facilities and provides for an administrative review process with detailed application requirements to allow for the review process to be completed within the required 60 day shot clock window. The new proposed review process for eligible facilities requests will be similar to the review process for small wireless facilities requests which was implemented by La Vista Ordinance No. 1393 on June 16, 2020.

**Staff Recommendation Item 4A:**

Staff recommends approval of the Zoning Text Amendments to Section 7.11 of the La Vista Zoning Ordinance.

## Section 7.11 Wireless ~~Communication~~ Telecommunications TowersFacilities

### 7.11.01 Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the City of La Vista's authority concerning the placement, construction, and modification of wireless telecommunications facilities. The City of La Vista finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character, and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to ensure that the placement, construction, or modification of wireless telecommunications facilities is consistent with the City's land use policies, the City is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this section is to minimize impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the residents of the City of La Vista.

### 7.11.02 Definitions.

For purposes of this section, and where not inconsistent with the context of a particular subsection, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given here. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

7.11.02.01 "Accessory Facility or Structure" means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

7.11.02.02 "Applicant" means any wireless service provider submitting an application for a conditional use permit or eligible facilities permit for wireless telecommunications facilities.

7.11.02.03 "Antenna" ~~means means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals, communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.~~

7.11.02.04 "Co-location" means the use of an existing tower or structure to support antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonable short time frame after the new tower is constructed.

7.11.02.05 "Commercial Impracticability" or "Commercially Impracticable" means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be "commercial impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".

7.11.02.06 "Completed Application" means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

7.11.02.07 "Distributed Antenna System or DAS" means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure, and generally serves multiple carriers. For the purposes of this Article, a distributed antenna system is considered a small wireless facility.

- 7.11.02.08 “Eligible Facility” means a facility as defined in FCC 14-153.
- 7.11.02.09 “Eligible Facilities Permit” means the official zoning permit approved and issued by the Community Development Director for application which meets the definition of an eligible facility.
- 7.11.02.10 “FAA” means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- 7.11.02.11 “FCC” means the Federal Communications Commission, or its duly designated and authorized successor agency.
- 7.11.02.12 “Height” means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, including antennas or lightening protection devices.
- 7.11.02.13 “Macro Tower” means a guyed or self-supported pole or monopole greater than the height parameters prescribed that supports or is capable of supporting antennas.
- 7.11.02.14 “Modification” or “Modify” means, the addition, removal or change of any of the physical and visually discernible components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernible components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.
- 7.11.02.15 “NIER” means Non-Ionizing Electromagnetic Radiation.
- 7.11.02.16 “Person” means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- 7.11.02.17 “Personal Wireless Facility” See definition for ‘Wireless Telecommunications Facilities.’
- 7.11.02.18 “Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PCS” shall have the same meaning as defined and used in the 1996 Telecommunications Act.
- 7.11.02.19 “Pole” means a service pole, municipally-owned utility pole, small wireless facility support pole, or other utility pole.
- ~~7.11.02.04~~ 7.11.02.20 “Repairs and Maintenance” means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernible components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
- ~~“Small Wireless Facility” means low-powered wireless base stations (nodes) consisting of an antenna and related equipment either installed singly or as part of a network to provide coverage or enhance capacity in a limited defined area. Small Wireless Facilities are usually operator managed and support only a single wireless service provider. The term:~~
- ~~Includes:~~

- ~~— Equipment associated with wireless communications;~~
- ~~— A radio transceiver, an antenna, a battery only backup power supply, and comparable equipment, regardless of technological configuration; and~~
- ~~— Coaxial or fiber optic cable that is immediately adjacent to and directly associated with a particular collocation; and~~
- ~~— Does not include:~~
  - ~~— An electric generator;~~
  - ~~— A pole; or~~

~~7.11.02.21 A macro tower, 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.~~

~~Small wireless facility(s) are governed and regulated by the City of La Vista's "Design Guidelines for the Installation of Wireless Facilities in Public Right of Way". Small wireless facility attachments located in the public right of way require an additional Master Lease Agreement with the City. La Vista Municipal Code Chapter 120 and La Vista Ordinance No. 1393.~~

~~7.11.02.22 "Small Wireless Facility Support Poles" means a pole installed by a network provider for the primary purpose of supporting a small wireless facility.~~

~~7.11.02.027.11.02.23 "Specialized Mobile Radio" or "SMR" means an analogue or digital trunked two-way radio system, operated by a service in the VHF, 220, UHF, 700,800 or 900 MHz bands.~~

~~7.11.02.24 "State" means the State of Nebraska.~~

~~7.11.02.25 "Stealth" or "Stealth Technology" means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless Telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.~~

~~7.11.02.26 "Telecommunications" means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.~~

~~7.11.02.27 "Telecommunication Site" See definition for Wireless Telecommunications Facilities.~~

~~7.11.02.28 "Telecommunications Structure" means a structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities.'~~

~~7.11.02.29 "Temporary" means, in relation to all aspects and components of this section, something intended to, or that does not exist for more than ninety (90) days.~~

~~7.11.02.30 "Tower" means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal, any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers,~~

guy towers, or monopole towers, and that is not a utility pole, an alternative antenna telecommunications structure, or City-owned infrastructure.

7.11.02.31 “Utility Pole” means an upright pole designed and used to support electric cables, telephone cables, telecommunications cables, cable service cables, which are used to provide lighting, traffic control, signage, or a similar function.

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

7.11.03 Overall Policy and Desired Goals for ~~Conditional Use Permits~~Eligible Facilities and Conditional Use Permits for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities does not negatively impact the health and safety of the public, environmental features, the nature and character of the community and neighborhood, and other aspects of the quality of life specifically listed elsewhere in this section, the City hereby adopts an overall policy with respect to an ~~conditional-use permit~~Eligible Facilities Permit or Conditional Use Permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

7.11.03.01 Requiring an ~~conditional-use permit~~Eligible Facilities Permit or Conditional Use Permit for any new, co-location or modification of a wireless telecommunications Facility.

7.11.03.02 Implementing an application process for person(s) seeking a ~~C~~onditional ~~U~~se ~~P~~ermit for wireless telecommunications facilities.

7.11.03.03 Establishing a policy for examining an application for and issuing an ~~conditional-use permit~~Eligible Facilities Permit or Conditional Use Permit for wireless telecommunications facilities that is both fair and consistent.

7.11.03.04 Establishing a policy for examining an application for and issuing an Eligible Facilities Permit or Conditional Use Permit for wireless telecommunications facilities that is both fair and consistent.

7.11.03.05 Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers.

7.11.03.06 Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

7.11.03.07 That in granting an ~~conditional-use permit~~Eligible Facilities Permit or Conditional Use Permit for wireless telecommunications facilities, the City has found that the facility shall be the most appropriate site insofar as it is the least visually intrusive among those available in the City.

7.11.04 Exceptions from application requirements for Wireless Telecommunications Facilities.

~~Exceptions from Conditional Use Permit requirement.~~ Except as otherwise provided by this ordinance no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities as of the effective date of this ordinance without having first obtained a conditional use permit Conditional Use Permit for wireless telecommunications facilities unless such corresponding wireless telecommunications facility is classified by the Community Development Director, or his or her designee, as: ~~Notwithstanding anything to the contrary in this section, no Conditional Use Permit shall be required for those non-commercial exclusions noted in Section 7.11.05.~~

~~All legally permitted wireless telecommunications facilities, constructed as permitted, existing on or before the effective date of this section shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this ordinance.~~

- 1) An Eligible Facilities request, which is subject to the permitting requirements of Section 7.11.07; or
- 2) A request for the installation of new or collocations of Small Wireless Facility(s) and/or Small Wireless Facility Support Poles as defined in Section 7.11.02. Small Wireless Facility(s) are, however, governed and regulated by the La Vista Municipal Code Chapter 120 and La Vista Ordinance No. 1393, the "City of La Vista Design Manual for Installation of Small Wireless Facilities and Small Wireless Facility Support Poles". Small Wireless Facility attachments located in the public right of way require an additional Master Lease Agreement with the City; or
- 3) One of the non-commercial exclusions delineated in 7.11.05; or
- 4) Repair and maintenance as defined in Section 7.11.02.

~~Repair and Maintenance of a Wireless Facility does not require an application for an conditional use permit~~ Eligible Facility Permit or Conditional Use Permit.

7.11.05 Non-Commercial Exclusions.

The following shall be exempt from Section 7.11:

- |            |  |
|------------|--|
| 7.11.05.01 | The City's fire, police, public works or other public service facilities owned and operated by the local government and/or public entities in partnership with the local government.   |
| 7.11.05.02 | Over-the-Air <del>reception</del> <u>Reception</u> Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.        |
| 7.11.05.03 | Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications.   |
| 7.11.05.04 | Facilities used exclusively for providing unlicensed spread spectrum technology i.e. Bluetooth or a 'Hot Spot', where the facility does not require a new tower, where the service is not to be used for commercial purposes, where there is no fee or charge for the use of the service and where the service is intended to be useable for less than a distance of 200 feet. |

7.11.06 Conditional Use Permit Application and Other Requirements

7.11.06.01 ~~Unless noted elsewhere in this section, all tower Development permits are governed by the regulations in Article 6: conditional use permits.~~ All applicants for a Conditional Use Permit for Telecommunications Facilities shall comply with the requirements set forth in this ordinance. Applications for a Conditional Use Permit for Wireless



Telecommunications Facilities must be made pursuant to Article 6 and this Article 7 of the Zoning Ordinance. Upon recommendation of the Planning Commission, the City Council is authorized to review, analyze, evaluate, and make decisions with respect to granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities. The City may at its discretion delegate or designate other official agencies or officials of the City to review, analyze, evaluate, and make recommendations to the Planning Commission and the City Council concerning matters involving Conditional Use Permits for Wireless Telecommunications Facilities.

- 7.11.06.02 All applications for an Conditional Use Permit for Wireless Telecommunications Facilities shall be filed with the Community Development Director's office pursuant to this section of the Zoning Ordinance.
- 7.11.06.03 The City may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
- 7.11.06.04 No wireless telecommunications facilities shall be installed, constructed or modified until the application is reviewed and approved by the City, and the ~~conditional-use permit~~ Conditional Use Permit for Wireless Telecommunications Facilities has been issued.
- 7.11.06.05 Any and all representations made by the applicant to the City on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the City.
- 7.11.06.06 An application for an Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
- 7.11.06.07 The Applicant must provide documentation to verify it has the right to proceed as proposed on the site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the Applicant owns the site, a copy of the ownership record is required.
- 7.11.06.08 The ~~applicant~~ Applicant shall include a statement in writing:
1. That the applicant's proposed ~~wireless-Wireless telecommunications facilities-Facilities~~ Telecommunications facilities-Facilities shall be maintained in a safe manner, and in compliance with all conditions of the ~~conditional-use permit~~ Conditional Use Permit for Wireless Telecommunications Facilities, without exception, unless specifically granted relief by the City in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable City, State and Federal laws, rules, and regulations;
  2. That the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the State.
- 7.11.06.09 Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a registered professional engineer licensed in the State.
- 7.11.06.10 In addition to all other required information as stated in Section 6 of this ordinance, all applications for the construction or installation of new wireless telecommunications facilities or modification of an existing facility shall contain the information hereinafter set forth.
1. A completed City of La Vista Planning and Zoning Application Form;
  2. A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
  3. Documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service primarily and essentially within the



City. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;

4. The location of nearest residential structure;
5. The location, size and height of all existing and proposed structures on the property which is the subject of the application;
6. The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
7. The number, type and model of the antenna(s) proposed with a copy of the specification sheet;
8. The make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users
9. A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
10. The frequency, modulation and class of service of radio or other transmitting equipment;
11. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
12. Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;
13. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
14. A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
15. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if existing tower or water tank site, a copy of the installed foundation design.

7.11.06.11 The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

7.11.06.12 Additional requirements for an application for a New Tower

1. In the case of a new tower, the applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the City in the application, along with any letters of rejection stating the reason for rejection.
2. In order to better inform the public, in the case of a new Telecommunication tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test". The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the City. The applicant shall inform the City, in writing, of the dates and times of the test, at

least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the application.

3. The applicant shall examine the feasibility of designing the proposed tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate at least four (4) additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
  - a) The foreseeable number of FCC licenses available for the area;
  - b) The kind of wireless telecommunications facilities site and structure proposed;
  - c) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
  - d) Available space on existing and approved towers.

7.11.06.13 Upon completing construction and before the issuance of the Certificate of Compliance, to ensure the tower was constructed as permitted, the Applicant is to provide signed documentation of the Tower condition per the requirements of ANS/TIA/EIA-222 (adopted by reference in the building code) Annex for Tower Maintenance, Condition Assessment, and Inspection Procedures. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

7.11.06.14 The owner of a proposed new tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other Wireless service providers in the future, and shall:

1. Respond within 60 days to a request for information from a potential shared-use applicant;
2. Negotiate in good faith concerning future requests for shared use of the new tower by other Telecommunications providers;
3. Allow shared use of the new tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
4. Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit.

7.11.06.15 The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, City, State and Federal structural requirements for loads, including wind and ice loads.

7.11.06.16 ~~If the proposal is for a co-location or modification on an existing tower, the applicant is to provide signed documentation of the tower condition such as an ANSI report as per Annex E, tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.~~ If the application is for a co-location or modification of an existing Tower, the Applicant is to provide signed documentation of the Tower condition per the requirements of ANS/TIA/EIA-222 (adopted by reference in the building code) Annex for Tower Maintenance, Condition Assessment

and Inspection Procedures. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

- 7.11.06.17 All proposed wireless telecommunications facilities shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the wireless telecommunications facility.
- 7.11.06.18 If the ~~proposal~~application is for a new tower, an antenna attachment to an existing structure, or modification adding to a visual impact, the applicant shall furnish a Visual Impact Assessment, which shall include:
1. If a new tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.
  2. Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the City as may be appropriate, including but not limited to State highways and other major roads; parks; other public lands; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
  3. A written description of the visual impact of the proposed facility including; and as applicable the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- 7.11.06.19 The ~~A~~applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed wireless telecommunications facility.
- 7.11.06.20 The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the City.
- 7.11.06.21 All utilities at a wireless telecommunications facilities site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- 7.11.06.22 At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- 7.11.06.23 All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

7.11.06.24 A holder of an ~~conditional use permit~~ Eligible Facilities Permit or Conditional Use Permit for a Wireless Communications Facility granted under this ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.

7.11.06.25 There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.

7.11.06.26 An applicant shall submit to the City the number of completed applications determined to be needed at the pre-application meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.

~~7.11.05.04~~ 7.11.06.27 The holder of an ~~conditional use permit~~ Eligible Facilities Permit or Conditional Use Permit for Wireless Telecommunications Facilities shall notify the City of any intended modification of a ~~wireless-Wireless telecommunication-Telecommunication facility-Facility~~ and shall apply to the City to modify, relocate or rebuild a ~~wireless Wireless telecommunications-Telecommunications facility-Facility~~.

7.11.07 Eligible facilities permit application and other requirements.

7.11.07.01. Compliance with application requirements. All applicants for an Eligible Facilities Permit shall comply with the requirements set forth in this Article.

7.11.07.02. Eligible Facilities Permit required. No Wireless Telecommunications Facilities that requires an Eligible Facilities Permit shall be installed, constructed or modified until the Eligible Facilities Permit has been approved by the Community Development Director, and all applicable building permits have been obtained in accordance with Section 9.04.

7.11.07.03. Representations by applicant. Any and all representations made by the applicant to the City or its consultants or experts during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the City.

7.11.07.04. Application requirements for Eligible Facilities Permits. An Eligible Facilities Permit application shall include the following information:

1. Name and address, and phone number of the applicant to include the legal name of the applicant.
2. The name, address, and phone number of the property owner. If the site is a tower and the tower owner is not the applicant, provide name and address of the tower owner.
3. The address and legal description of the property.
4. A signed statement that the modification qualifies as an Eligible Facilities request.
5. A signed statement that verifies the applicant has the right to proceed as proposed on the site. If the applicant owns the site, a statement is not required.
6. A signed statement that verifies that the construction of the proposed Wireless Telecommunications Facility shall be legally permissible upon the City's approval of the corresponding eligible permit and upon the issuance of all applicable building permits to be obtained in accordance with Section 9.04. Such statement shall include, but not limited to, confirmation of the fact that the applicant is authorized to do business in the State.

7. A signed statement that the application complies with federal guidelines regarding interference and ANSI standards as adopted by the FCC including but not limited to NIER standards.
8. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices.
9. A site plan that complies with Section 5.15.05.02, which also includes:
  - a) The location, size and height of all existing and proposed structures on the property which is the subject of the application; and
  - b) The type, locations and dimensions of all proposed and existing landscaping, screening, and fencing.
10. A description of the proposed antenna(s), and all related fixtures, structures, appurtenances, and apparatus, including height above pre-existing grade, materials, color, and lighting. This shall include:
  - a) The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure; and
  - b) The number, type and model of the antenna(s) and equipment proposed with a copy of the specification sheet; and
  - c) The make, model, type and manufacturer of the tower; and
  - d) The frequency, modulation, and class of service of radio or other transmitting equipment; and
  - e) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts.
11. A structural analysis report that includes calculations that the Wireless Telecommunication Facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all City, State and Federal structural requirements for loads, including wind and ice loads. Such structural analysis shall bear the signature and seal of a registered professional structural engineer licensed in the State.

7.11.07.05. Utility installation. All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Code where appropriate.

7.11.07.06. Compliance with technical, safety, and safety-related codes. All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified, or restored in strict compliance with all current applicable technical, safety, and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent editions of the ANSI Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding codes, the more stringent shall apply.

7.11.07.07. Responsibility for permits and licenses. A holder of an Eligible Facilities Permit granted under this Article shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.

#### 7.11.08 Location of Wireless Telecommunications Facilities

- 7.11.08.01 Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one (1) being the highest priority and ~~six-ten (106)~~ being the lowest priority.
1. On existing towers or other structures on city owned properties, including the right-of-way.
  2. On existing towers or other structures on other property in the City.
  3. A new tower on City-owned properties.
  4. A new tower on properties in areas zoned for Heavy Industrial use.
  5. A new tower on properties in areas zoned for Light Industrial use.
  6. A new tower on properties in areas zoned for Transitional Agricultural use.
  7. New Small Wireless Facilities in the right-of-way.
- 7.11.08.02 If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.
- 7.11.08.03 An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the City why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- 7.11.08.04 Notwithstanding the above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- 7.11.08.05 The Aapplicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
- 7.11.08.06 Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application for any of the following reasons.
1. Conflict with safety and safety-related codes and requirements;
  2. Conflict with the nature or character of a neighborhood or district;
  3. The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
  4. The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers;
  5. Conflicts with the provisions of this ordinance.

#### 7.11.09 Shared Use of Wireless Telecommunications Facilities and Other Structures

- 7.11.09.01 The City, as opposed to the construction of a new tower, shall prefer locating on existing towers or others structures without increasing the height. The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within two (2) miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure cannot be used.



- 7.11.09.02 An Applicant intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the applicant.
- 7.11.09.03 Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.

7.11.10 Height of Telecommunications Tower(s)

- 7.11.10.01 The Applicant shall submit documentation justifying the total height of any tower, facility and/or antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.
- 7.11.10.02 No tower constructed after the effective date of this section, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with City, State, and/or any Federal statute, law, local law, city ordinance, code, rule or regulation. The height limitations in this section shall supersede the height limitations set forth in Section 4.15.

7.11.11 Visibility of Wireless Telecommunications Facilities.

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

7.11.12 Security of Wireless Telecommunications Facilities.

- 7.11.12.01 All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
1. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
  2. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

7.11.13 Signage

- 7.11.13.01 Wireless telecommunications facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

#### 7.11.14 Lot Size and Setbacks

- 7.11.14.01 All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed tower or wireless telecommunications Facility structure plus ten percent (10%) of the height of the tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

#### 7.11.15 Retention of Expert Assistance and Reimbursement by Applicant

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

#### 7.11.16 Application and Permit Fees

Application and permit fees for At the time that a person submits an application for a Ceonditional Use Permit for a new tower or for an Eligible Facilities Permit, such person shall pay a non-refundable fee as are established in the Master Fee Schedule. Application fees are non-refundable and shall be submitted at the time that a person submits an application.-

#### 7.11.17 Performance Security

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of this ordinance and conditions of any Eligible Facilities Permit or Ceonditional Use Permit issued pursuant to this ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Ceonditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Eligible Facilities Permit or Ceonditional Use Permit.

#### 7.11.18 Reservation of Authority to Inspect Wireless Telecommunications Facilities

In order to verify that the holder of a Ceonditional Use Permit for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

#### 7.11.19 Liability Insurance

- 7.11.19.01 A holder of an Eligible Facilities Permit or Ceonditional Use Permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Ceonditional Use Permit in amounts as set forth below
1. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
  2. Automobile Coverage: \$1,000,000 per each accident;
  3. Workers Compensation and Disability: Statutory amounts



- 7.11.19.02 For a wireless telecommunications facility on City property, the Commercial General Liability insurance policy shall specifically include the City and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.
- 7.11.19.03 The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- 7.11.19.04 The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least ten (10) days prior written notice in advance of the cancellation of the insurance for non-payment or 60 days for all other reasons.
- 7.11.19.05 Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- 7.11.19.06 Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than fifteen (15) days after the granting of the Eligible Facilities Permit or Ceonditional Use Permit, the holder of the Eligible Facilities Permit or Ceonditional Use Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

#### 7.11.20 Indemnification

- 7.11.20.01 Any application for wireless telecommunication facilities that is proposed for City property, pursuant to this ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
- 7.11.20.02 Notwithstanding the requirements noted in Section 7.11.19.01, an indemnification provision will not be required in those instances where the City itself applies for and secures an Eligible Facilities Permit ~~conditional~~ or Conditional Use Permit for wireless telecommunications facilities.

#### 7.11.21 Default and/or Revocation.

If a Wireless ~~T~~elecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this ordinance or of the Eligible Facilities Permit or Ceonditional Use Permit, then the City shall notify the holder of the Eligible Facilities Permit ~~conditional~~ or Conditional Use Permit in writing of such violation. A permit holder in violation may be considered in default and subject to fines as in Section 25 and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the Eligible Facilities Permit or Ceonditional Use Permit is subject to revocation.

#### 7.11.22 Removal of Wireless Telecommunications Facilities.

- 7.11.22.01 Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of wireless telecommunications facilities.
1. Wireless ~~telecommunications~~ Telecommunications facilities Facilities or Small Cell Wireless Facilities with a permit have been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
  2. Permitted ~~wireless~~ Wireless telecommunications Telecommunications facilities Facilities or Small Cell Wireless Facilities fall into such a state of disrepair that it creates a health or safety hazard;
  3. Wireless telecommunications Telecommunications facilities Facilities or Small Cell Wireless Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Eligible Facilities Permit or Ceonditional Use Permit, or any other necessary authorization; ~~and the~~
  4. The Ceonditional Use Permit may be revoked by City Council as authorized within the conditions set forth within the approved Conditional Use Permit.
- 7.11.22.02 If the City makes such a determination as noted in Section 7.11.21.01, then the City shall notify the holder of the Eligible Facilities Permit or Ceonditional Use Permit for the wireless telecommunications facilities within forty-eight (48) hours that said wireless telecommunications facilities are to be removed, the City may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.
- 7.11.22.03 The holder of the Eligible Facilities Permit or Ceonditional Use Permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the City.
- 7.11.22.04 If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within ninety (90) days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the wireless telecommunications facilities at the sole expense of the owner or Eligible Facilities Permit or Ceonditional Use Permit holder.
- 7.11.22.05 If, the City removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the City may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.
- 7.11.22.06 Notwithstanding anything in this Section to the contrary, the City may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the Eligible Facilities Permit or Ceonditional Use Permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the Eligible Facilities Permit or Ceonditional Use Permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this Section.

### 7.11.23 Relief

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

### 7.11.24 Periodic Regulatory Review by the City

- 7.11.24.01 The City may at any time conduct a review and examination of this entire ordinance.
- 7.11.24.02 If after such a periodic review and examination of this ordinance, the City determines that one or more provisions of this ordinance should be amended, repealed, revised, clarified, or deleted, then the City may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the City, the City may repeal this entire ordinance at any time.
- 7.11.24.03 Notwithstanding the provisions of Sections 7.11.23.01 and 7.11.23.02, the City may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this ordinance.

### 7.11.25 Adherence to State and/or Federal Rules and Regulations

- 7.11.25.01 To the extent that the holder of an an Eligible Facilities Permit or Ceonditional Use Permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such an an Eligible Facilities Permit or Ceonditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- 7.11.25.02 To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of an an Eligible Facilities Permit or Ceonditional Use Permit for wireless telecommunications facilities, then the holder of such an Eligible Facilities Permit or Ceonditional Use Permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.