

SECTION 1102 FENCES, HEDGES AND RETAINING WALLS

Fences and Hedges: Notwithstanding other provisions of this ordinance, fences and hedges may be permitted in any required yard, provided that no fence or hedge along the sides or front edge of any front yard shall be over three- and one-half feet (42 inch) in height. Additionally, no fence or hedge shall exceed 2 ½ feet (30 inch) in height when located within the sight triangle of a corner lot.

Notwithstanding the above, any real estate located outside the corporate limits of the City of Blair and which is included in the General Agricultural Zoning District or the Rural Residential Estate Zoning District shall be exempt regarding fences and hedges from the requirements set forth hereinabove in this Section.

A) The following regulations shall apply to the construction of fences.

- 1) No solid fence shall be constructed closer to the street than the front property line. If the sidewalk is located within the front yard, no fence shall enclose the sidewalk, nor shall a fence be constructed nearer than six inches (6") to the sidewalk.
- 2) No fence erected in a required front yard shall materially obstruct the public view. No component of a front yard fence shall exceed forty-two inches (42") in height, nor shall any structural member exceed thirty-six inches (36") in area, as measured using the horizontal cross section.
- 3) No fence shall be constructed which will constitute a traffic hazard as identified in the sight triangle of a corner lot (See Section 1101).
- 4) No fence constructed in the second-front yard (the side yard abutting the street) of a corner lot shall exceed forty-eight inches (48") in height. However, open fences in the second front yard may exceed forty-eight inches (48"), but no taller than seventy-two inches (72"), if the fence is built on or inside the property-line boundary. Examples of an open fence include decorative, picket or wrought iron where 50% of the surface is open and a person can see through the fence. For the purposes of this section, the "second-front yard" shall be deemed to be in the area extending from the front corner of the house to the rear lot line on the side of the lot immediately adjacent to the City Street.
- 5) No fence constructed in the reverse front yard (third front) of a lot shall exceed six feet (72") in height. On corner reverse lots, fences shall not exceed forty-eight inches (48") in the second front.
- 6) No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals by intent of its construction or by inadequate maintenance (examples of hazardous or dangerous fences shall be wire strand fences such as electrical conduit wire fences, barbed wire fences, chicken wire fences, etc.). Permitted types of fences shall include chain link fencing, wood fencing (including split rail and split rail with plastic coated wire backing), wrought iron, plastic, vinyl and other ornamental fencing or masonry (see Item #7).
- 7) Applicants for masonry fences must first locate the property pins or have a licensed surveyor locate or set the property pins to confirm the location of the property lines. The side of concrete fences facing any adjoining property or right of way must be brick or stone textured.
- 8) No fence within Residential Districts, except fences erected upon public or parochial school grounds or in public parks and in public playgrounds, shall be constructed of a height greater than six (6) feet.
- 9) All fences shall conform to the construction standards of the building code and other ordinances.

- 10) In commercial and industrial districts, maximum height of fences shall be six (6) feet. Except, when industry standards for certain types of businesses require fences of greater heights, the Zoning Administrator at his/her discretion may allow greater heights.
 - 11) All fences or parts thereof which are solid shall be constructed so that all posts, braces, stringers, and all other structural members faced to the interior or the lot or parcel being fenced.
 - 12) Effective from and after July 1, 1998, the Rules and Regulations of the International Building Code pertaining to confinement and fencing of outdoor pools shall be in effect and shall be enforced.
 - 13) All fence posts shall be made of wood, wrought iron, plastic, vinyl, ornamental fencing, and masonry or of similar material as the remainder of the fence.
- B) The following regulations shall apply to the construction of retaining walls.
- 1) PURPOSE AND INTENT.
 - a) To allow for the review of retaining walls of a size that may impact surrounding buildings, land, and uses;
 - b) To require the construction of retaining walls in a manner consistent with engineering and construction best practices; and
 - c) To lessen the impact of large retaining walls on abutting properties and the public by encouraging the use of landscaping and aesthetically pleasing design elements.
 - 2) APPLICABILITY AND EXEMPTIONS: The regulations and requirements contained herein shall apply to all retaining walls erected in the City of Blair, except the following:
 - a) Retaining walls that are six (6) feet in height or less shall not require a building permit but must meet the requirements of this section.
 - b) A terraced combination of walls, in which each separate wall is six (6) feet in height or less and in which each terrace is at least two times (2x) the height of the next lowest wall, shall not require a building permit but must meet the requirements of this section.
 - 3) GENERAL REQUIREMENTS: Following are the general requirements for retaining walls, including walls six (6) feet in height or less that do not require a building permit. No retaining wall shall be constructed in excess of these General Requirements regarding maximum height or maximum slope without first obtaining a Conditional Use Permit (see Subsection B(4) below).
 - a) Permit and Design - A building permit shall be required for all retaining walls that are over six (6) feet in height. All retaining walls requiring a permit must be designed by an engineer licensed in Nebraska.
 - b) Terracing - Terracing of retaining walls is allowed and encouraged. In a terraced retaining wall system, if a successive wall is setback from the next lowest wall at least two times (2x) the height of the next lowest wall, the walls shall be considered as separate walls. If a successive wall is setback from the next lowest wall less than two times (2x) the height of the next lowest wall, the multiple walls shall be treated as a single wall and the height shall be measured as described in subsection 3(c) below.

- c) Determining Retaining Wall Height - The height of a retaining wall shall be the distance from the grade at the front of the wall to the grade at the back of the wall at the same section. For walls that are not a constant height the largest of these measurements shall be used to determine the height of the wall. Multiple walls treated as a single wall shall be measured from the grade at the front of the lowest wall to the grade at the back of the highest successive wall.
- d) Setback and Maximum Height Requirements –
 - i. Applicants for retaining walls located within three (3) feet of a property line must first locate the property pins or have a licensed surveyor locate or set the property pins to confirm the location of the property lines.
 - ii. Retaining walls which discharge storm water at their base from downspout drains located on any structure shall be located at least three (3) feet from the property line. Such discharge locations shall be constructed and maintained to eliminate any erosion from the base of the wall or adjoining property.
 - iii. Front yard(s) – No retaining wall erected in a required front yard shall materially obstruct public view or constitute a traffic hazard as identified in the site triangle of a corner lot (See Section 1101). No retaining wall shall be constructed closer than six (6) inches from the front property line without an easement from the City. No retaining wall in a required front yard shall exceed three and a half (3½) feet in height. No retaining wall bordering and facing the driveway or approved parking areas shall exceed ten (10) feet in height.
 - iv. Side and rear yard(s) - No retaining wall shall be constructed closer than six (6) inches from the side or rear property line. If the face of the retaining wall is towards the inside of the property, a permanent easement must exist for all areas outside the property requiring geogrid support and backfill, and such easements must be recorded against all effected properties. No retaining wall shall exceed ten (10) feet in height.
- e) Wall Surcharge – Retaining walls shall have a maximum 1:4 (25%) slope in the soil surcharge uphill from the retaining wall for a minimum distance of two times (2x) the height of the wall.
- f) Nonconforming Retaining Walls - Retaining walls constructed and/or permitted prior to the adoption of these regulations shall be allowed to remain in their existing state; however, significant changes or alterations to such walls shall be made in conformity with these regulations. The repair and routine maintenance of nonconforming retaining walls shall be allowed without requiring conformity with these regulations.

4) **CONDITIONAL USE PERMIT REQUESTS TO EXCEED GENERAL HEIGHT AND/OR SLOPE LIMITATIONS:**

- a) A Conditional Use Permit application may be submitted for the following exceptions only:
 - i. Retaining walls to exceed the maximum heights indicated in Subsection B(3)(d).
 - ii. Retaining walls to exceed the maximum 1:4 (25%) slope in the soil surcharge indicated in Subsection B(3)(e).
- b) A Conditional Use Permit application must address, and will be evaluated on, the following criteria:
 - i. That the proposed retaining wall is otherwise in compliance with the provisions of this Section;

- ii. That the proposed retaining wall will not adversely impact adjacent property, the public or public infrastructure;
- iii. That the proposed retaining wall is the minimum structure necessary to allow a subject property to be reasonably utilized.

~~Notwithstanding the above, any real estate located outside the corporate limits of the City of Blair and which is included in the General Agricultural Zoning District or the Rural Residential Estate Zoning District shall be exempt regarding fences and hedges from the requirements set forth hereinabove in this Section.~~

SECTION 1102.01 SATELLITE DISHES, TELEVISION ANTENNAS, WIND GENERATORS

Satellite dishes over twenty (20) inches in diameter, television antennas, and wind generators shall not be located in the front, other street yard or side yard, but may be located in the rear yard if they are at least five (5) feet from the side lot line, ten (10) feet from the rear lot line, and on corner lots they shall be set back the full required front yard set-back on the other street yard frontage. If these structures are located on top of the main structure, they must meet the minimum set-backs for the district.

If these structures are to be located on a double frontage lot, they may be located in the front yard which is opposite of the direction which the majority of the residential structures in the block face as long as they are at least twenty (20) feet from the street right-of-way and five (5) feet from the side lot line.

1102.02 WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES

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1102.02(1) Purposes.

Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City.

Specifically, the purposes of this Ordinance are:

- (a) To regulate the location of Towers and Telecommunications Facilities in the City;
- (b) To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
- (c) To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
- (d) To promote and encourage shared use/collection of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
- (e) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;
- (f) To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
- (g) To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

1102.02(2) Definitions.

The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (a) *Act* means the Telecommunications Act of 1996.
- (b) *Antenna Support Structure* means any building or structure other than a Tower which can be used for location of Telecommunications Facilities.
- (c) *Applicant* means any Person that applies for a Tower development permit.
- (d) *Application* means the process by which the Owner of a parcel of land within the zoning jurisdiction of the City submits a request to develop, construct, build, modify, or erect a Tower upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an Applicant to the City concerning such a request.
- (e) *Engineer* means any engineer licensed by the State of Nebraska.
- (f) *Owner* means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the zoning jurisdiction of the City who desires to develop, or construct, build, modify, or erect a Tower upon such parcel of land.
- (g) *Person* is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
- (h) *Stealth* means any Tower or Telecommunications Facility which is designed to enhance compatibility with

adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.

- (i) *Telecommunications Facilities* means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:
 - (1) any satellite earth station dish which is twenty (20) inches in diameter or less, or otherwise regulated under Section 1102.01 hereinabove; and,
 - (2) any amateur radio station operator/receive-only antenna. This section shall not govern the installation of any antenna owned or operated by an amateur radio operator and used exclusively for receive-only antennas and for private noncommercial purposes which shall be regulated elsewhere in the zoning regulations for the City of Blair, Nebraska and the municipal code of the City of Blair, Nebraska.
- (j) *Tower* means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities.

1102.02(3) Development of Towers.

- (a) No person shall build, erect, or construct a Tower upon any parcel of land within any zoning district unless a conditional use permit shall have been issued in the manner provided in Article 14 hereinafter. No person shall build, erect, or construct a Tower upon any parcel of land except within the following zoning districts:
 - 1. A/ML -- AGRICULTURAL/LIGHT INDUSTRIAL AND MANUFACTURING
 - 2. A/MH -- AGRICULTURAL/HEAVY INDUSTRIAL
 - 3. AGG -- GENERAL AGRICULTURAL DISTRICT; provided however, no person shall build, erect or construct a tower within one mile from the corporate limits of the City of Blair, Nebraska, as amended from time to time.
- (b) Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with 1102.02(17) "Criteria for Site Plan Development Modifications."
- (c) No new Tower shall be built, constructed, or erected within the zoning jurisdiction of the City unless the Tower is capable of supporting another Person's operating Telecommunications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction.
- (d) An Application to develop a Tower shall include:
 - (1) The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.
 - (2) The legal description and address of the parcel of land upon which the Tower is situated.
 - (3) The names, addresses, and telephone numbers of all owners of other Towers or fusible Antenna

- Support Structures within a one-half (½) mile radius of the proposed new tower site, including City-owned property.
- (4) A description of the design plan proposed by the Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
 - (5) An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to obtain permission to install or collocate the Applicant's Telecommunications Facilities on City-owned Towers or usable Antenna Support Structures located within a one-half (½) mile radius of the proposed Tower site.
 - (6) An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or collocate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site.
 - (7) Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another Person's Tower or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site.
 - (8) A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
 - (9) Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in 1102.02(5), "Structural Requirements", of this Ordinance.
 - (10) Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
 - (11) In order to assist the City staff, Planning Commission and City Council in evaluating visual impact, the Applicant shall submit color photo simulations showing the proposed site of the Tower with a photo-realistic representation of the proposed Tower as it would appear viewed from the closest residential property and from adjacent roadways.
 - (12) The Act gives the FCC sole jurisdiction of the field of regulation of RF emissions and does not allow the City to condition or deny, on the basis of RF impacts, the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the City shall make available, upon request, copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards. Applicants shall certify that all franchises or licenses required under federal, state or local law for the construction and/or operation of a wireless communication system in the City have been obtained and shall file a copy of all such required franchises and/or licenses with the City staff.

(13) Identification of the entities providing the backhaul network for the tower(s) described in the application and other towers or cellular sites owned and/or operated by the applicant.

- (e) The Planning Commission may require an applicant to supplement any information the Commission considers inadequate or the applicant has failed to comply. In granting a conditional use permit, conditions may be imposed to the extent that the Commission and the City Council conclude that such conditions are reasonably necessary to minimize any adverse effect of the proposed tower on adjoining properties. The Commission or the Council may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the City in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

The Commission and City Council shall consider the following factors in determining whether to issue a conditional use permit, although the Commission and City Council may waive or reduce the burden on the applicant of one or more of these criteria if the Commission and City Council conclude that the goals of this section are better served thereby;

1. Height of proposed tower.
2. Proximity of the tower to residential structures and residential district boundaries.
3. Nature of uses on adjacent and nearby properties.
4. Surrounding topography.
5. Surrounding tree coverage and foliage.
6. Design of tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
7. Proposed ingress and egress.
8. Availability of suitable existing towers, other structures or alternative technologies not requiring the use of towers or structures.

No new towers shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Commission and the City Council that no existing tower structure alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed tower. Evidence submitted to demonstrate that no existing tower structure alternative technology can accommodate the applicant's proposed antenna may include any of the following (although nothing should be construed to infer that meeting one, some or all of the following shall entitle the applicant to approval).

1. No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

4. The applicant's proposed antenna would cause interference with the antenna on existing towers or structures or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
5. The fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure are commercially unreasonable.
6. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

The applicant demonstrates that an alternative technology that does not require the use of towers or structures is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

1102.02(4) Setbacks.

- (a) All Towers shall be set back on all sides a distance equal to the minimum front yard, rear yard and side yard setback requirement in the applicable zoning district. In addition to the minimum yard setback requirements, all towers shall be set back one (1) additional foot per each foot of Tower height.
- (b) Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
- (c) Setback requirements may be modified, as provided in 1102.02(17), when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

1102.02(5) Structural Requirements.

All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the applicable Building Code, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

1102.02(6) Separation or Buffer Requirements.

For the purpose of this Ordinance, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower. Tower separation distances from residentially zoned lands shall be measured from the base of a Tower to the closest point of residentially zoned property. The minimum Tower separation distances from residentially zoned land and from other Towers shall be calculated and applied irrespective of City jurisdictional boundaries.

- (a) Towers shall be separated from all residentially zoned lands by a minimum of two hundred (200) feet or two hundred (200) percent of the height of the proposed Tower, whichever is greater.
- (b) Proposed Towers must meet the following minimum separation requirements from existing Towers or Towers which have been granted a conditional use permit but are not yet constructed at the time a conditional use permit is granted pursuant to this Code:
 - (1) Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.

- (2) Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
- (3) Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.

1102.02(7) Method of Determining Tower Height.

Measurement of Tower height for the purpose of determining compliance with all requirements of this Section shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.

1102.02(8) Illumination.

Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of the Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA.

1102.02(9) Exterior Finish.

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body.

1102.02(10) Landscaping.

All landscaping on a parcel of land containing Towers, Antenna Support Structures, or Telecommunications Facilities shall be in accordance with the applicable landscaping requirements in the zoning district where the Tower, Antenna Support Structure, or Telecommunications Facilities are located. The City may require landscaping in excess of the requirements in the City Code in order to enhance compatibility with adjacent land uses. Landscaping shall be installed on the outside of any fencing.

1102.02(11) Deleted

1102.02(12) Stealth Design.

Stealth design is encouraged. The issue of stealth design will be considered as an element of the building design criteria considered as part of the issuance of the conditional use permit.

No signs shall be allowed on any antenna or tower.

1102.02(13) Telecommunications Facilities on Antenna Support Structures.

Any Telecommunications Facilities which are not attached to a Tower may be permitted on any Antenna Support Structure at least fifty (50) feet tall, regardless of the zoning restrictions applicable to the zoning district where the structure is located. Telecommunications Facilities are prohibited on all other structures. The owner of such structure shall, by written certification to the zoning administrator, establish the following at the time plans are submitted for a building permit:

- (a) That the height from grade of the Telecommunications Facilities shall not exceed the height from grade of City of Blair Zoning Regulations

the Antenna Support Structure by more than twenty (20) feet;

- (b) That any Telecommunications Facilities and their appurtenances, located above the primary roof of an Antenna Support Structure, are set back one (1) foot from the edge of the primary roof for each one (1) foot in height above the primary roof of the Telecommunications Facilities. This setback requirement shall not apply to Telecommunications Facilities and their appurtenances, located above the primary roof of an Antenna Support Structure, if such facilities are appropriately screened from view through the use of panels, walls, fences, or other screening techniques approved by the City. Setback requirements shall not apply to Stealth antennas which are mounted to the exterior of Antenna Support Structures below the primary roof, but which do not protrude more than eighteen (18) inches from the side of such an Antenna Support Structure.

1102.02(14) Modification of Towers.

- (a) A Tower existing prior to the effective date of this Ordinance, which was in compliance with the City's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such nonconforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections 1102.02(6), "Separation or Buffer Requirements," 1102.02(15), "Certification and Inspections," and 1102.02(16), "Maintenance," so long as:
 - (1) The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower;
 - (2) An Application for a conditional use permit is made in the manner provided in this Article and Article 12;. The grant of a conditional use permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming; and
 - (3) The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.
- (b) Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted, which structure or use is in violation of the Code prior to enactment of this Ordinance.

1102.02(15) Certification and Inspections.

- (a) All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of the Building Code and all other construction standards set forth by the City's Code and federal and state law. For new monopole Towers, such certification shall be submitted with an Application pursuant to 1102.02(3) of this Ordinance and every five (5) years thereafter. For existing monopole Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an Application pursuant to 1102.02(3) of this Ordinance and every two (2) years thereafter. For existing lattice or guyed Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every two (2) years thereafter. The Tower owner may be required by the City to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the

Tower is jeopardized.

- (b) The City or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with the Building Code and all other construction standards provided by the City Code and federal and state law.
- (c) The City reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the City shall be borne by the Tower owner.

1102.02(16) Maintenance.

- (a) Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (b) Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- (c) All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.
- (d) All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.
- (e) All Towers shall maintain compliance with current RF emission standards of the FCC.
- (f) In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued.

1102.02(17) Criteria for Site Plan Development Modifications.

- (a) Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the City Board of Zoning Adjustment (“Board of Adjustment”) as a variance in accordance with the following:
 - (1) In addition to the requirement for a Tower Application, the Application for modification shall include the following:
 - (i) A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.
 - (ii) A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.
 - (iii) A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.

- (iv) For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contact and negotiate an agreement for collocation, and the result of such attempts.
- (v) The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the City to determine whether the antenna study supports the basis for the modification requested.

The cost of review by the City’s Engineer shall be reimbursed to the City by the Applicant.

- (2) The Board of Adjustment shall consider the Application for modification based on the following criteria:
 - (i) That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
 - (ii) Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
 - (iii) In addition, the Board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.

- (b) In addition to the requirements of subparagraph (a) of this Section and the requirements of Article 13, in the following cases the Applicant must also demonstrate, with written evidence, the following:
 - (1) In the case of a requested modification to the setback requirement, 1102.02(4), that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.
 - (2) In the case of a request for modification to the separation and buffer requirements from other Towers of 1102.02(6), “Separation or Buffer Requirements,” that the proposed site is zoned A/MH or A/ML and the proposed site is at least double the minimum standard for separation from residentially zoned lands as provided for in 1102.02(6).
 - (3) In the case of a request for modification of the separation and buffer requirements from residentially zoned land of 1102.02(6), if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant’s wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially zoned property.
 - (4) In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
 - (i) facilitate collocation of Telecommunications Facilities in order to avoid construction of a new Tower;
 - (ii) to meet the coverage requirements of the Applicant’s wireless communications system, which requirements must be documented with written, technical evidence from an

Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

- (c) In addition to the foregoing, the Applicant must demonstrate that, by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of his property, the strict application of any enacted regulation under this article would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property. The Board of Adjustment may authorize a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution. No such variance shall be authorized by the Board of Adjustment unless it finds that:
- (a) The strict application of the zoning regulation would produce undue hardship;
 - (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
 - (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from the variations for purposes of convenience, profit or caprice.

1102.02(18) Abandonment.

- (a) If any Tower shall cease to be used for a period of 180 consecutive days, the City Council shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the City Council that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the City Council shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.
- (b) To secure the obligation set forth in this Section, the Applicant (and/or Owner) shall post a bond in an amount to be determined by the City Council at the time of the approval of the issuance of the conditional use permit based on the anticipated cost of removal of the Tower.

1102.02(19) Severability.

That if any clause, section, or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

(END OF SECTION)

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