

ORDINANCE 3171

AN ORDINANCE ESTABLISHING TITLE 4 OF THE OFFICIAL CODE OF THE CITY OF GREAT FALLS (OCCGF), PERTAINING TO TELECOMMUNICATION FACILITIES.

* * * * *

WHEREAS, the City Commission established Title 5 of the OCCGF outlining provisions pertaining to Business License and Safety Inspection Certificate; and

WHEREAS, OCCGF Title 5 also contains regulations regarding telecommunication facilities; and

WHEREAS, the City Commission believes regulations regarding telecommunication facilities would be more appropriately located in a separate title within the OCCGF; and

WHEREAS, a Title 4 of the OCCGF does not currently exist; and

WHEREAS, the City Commission wishes to continue to regulate the construction and maintenance of telecommunication facilities within the incorporated City limits.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

Section 1. The City Commission hereby establishes OCCGF Title 4 titled "Telecommunication Facilities".

Section 2. All regulations regarding telecommunication facilities shall be written as depicted in Exhibit "A" attached hereto; and

Section 3. This ordinance shall be in full force and effect thirty (30) days after second reading and final adoption by the City Commission.

ACCEPTED by the City Commission of the City of Great Falls, Montana on first reading October 3, 2017.

ADOPTED by the City Commission of the City of Great Falls, Montana on second reading October 17, 2017.

Bob Kelly, Mayor

ATTEST:

(CITY SEAL)

Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT:

Joseph P. Cik, Assistant City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do certify that I did post as required by law and as prescribed and directed by the Commission, Ordinance 3171 on the Great Falls Civic Center posting board and the Great Falls City website.

Lisa Kunz, City Clerk

(CITY SEAL)

Title 4 TELECOMMUNICATION FACILITIES

Chapter

Chapter 1 – GENERAL PROVISIONS

Chapter 2 – TELECOMMUNICATION FACILITY REGULATIONS

Chapter 1 GENERAL PROVISIONS

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4.1.010 Purpose.

- A. The purpose and intent of this chapter is to provide a uniform and comprehensive set of standards for the development of telecommunication facilities and installation of antennas. The regulations contained herein are designed to protect and promote public health, safety, community welfare, and the aesthetic quality of Great Falls while at the same time not unduly restricting the development of needed telecommunications facilities and important amateur radio installations and encouraging managed development of telecommunications infrastructure.
- B. It is furthermore intended that, to all extent permitted by law, the City shall apply these regulations to specifically accomplish the following:
 - 1. Protect the visual character of the City from the potential adverse effects of telecommunication facility development and minor antenna installation;
 Ensure against the creation of visual blight within or along the City's scenic corridors and ridgelines;
 - 3. Retain local responsibility for, and control over, the use of public rights-of-way and easements to protect citizens and enhance the quality of their lives;
 - 4. Protect the inhabitants of Great Falls from the possible adverse health effects associated with exposure to high levels of NIER (non-ionizing electromagnetic radiation);
 - 5. Protect the environmental resources of Great Falls;

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6. Ensure that a competitive and broad range of telecommunications services and high-quality telecommunications infrastructure are provided to serve the business community;
7. Create and preserve telecommunication facilities that will serve as an important, and effective, part of Great Falls' emergency response network;
8. Simplify and shorten the process for obtaining necessary permits for telecommunication facilities, while at the same time, protecting the legitimate interests of Great Falls citizens; and
9. Provide for the charging of reasonable, competitively neutral, and non-discriminatory fees for use of the public right-of-way by telecommunication providers.

4.1.020 Definitions.

Unless otherwise specified, the following words and phrases when used in this Article shall have the following meanings:

- A. "Antenna" means any system or specific device the surface of which is used to capture an incoming, and/or to transmit, an outgoing radio frequency signal. Antennas include the following types:
 1. "Building Mounted Antenna" means any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building, tank, tower, building mounted mast less than ten (10) feet tall and six (6) inches in diameter, or structure other than a telecommunication tower.

"Directional Antenna" (also known as a "panel" antenna) transmits and/or receives radio frequency signals in a directional pattern of less than three hundred sixty (360) degrees.
 3. "Ground Mounted Antenna" means any antenna with its base, single or multiple posts, placed directly on the ground.
 4. "Omni-directional Antenna" transmits and/or receives radio frequency signals in a three hundred sixty (360) degree radial pattern. For the purpose of this Title, an omni-directional antenna is up to fifteen (15) feet in height and up to four (4) inches in diameter.
 5. "Parabolic Antenna" (also known as a "satellite dish" antenna) means any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, bowl, or cornucopia shaped and is used to transmit and/or receive electromagnetic, or radio frequency communication/signals, in a specific directional pattern. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earth stations and satellite microwave antennas.
 6. "Portable Antenna" means any device used to transmit and/or receive electromagnetic, or radio frequency, communication/signals in a specific directional pattern, located on a portable or moveable base designed to be placed either for temporary or long-term use at a given site.
 7. "Vertical Antenna" means a vertical type antenna, without horizontal cross-sections greater than one-half (½) inch in diameter.
- B. "Co-location" - see telecommunication facility - co-located.

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- C. "Commercial Use" means a use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other consideration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over any period of time.
- D. "Direct Broadcast Satellite Service" (DBS) is a system in which signals are transmitted directly from a satellite to a small (not exceeding eighteen (18) inches) home receiving dish. DBS competes with cable television.
- E. "Equipment Building, Shelter or Cabinet" means a cabinet, or building, used to house equipment used by telecommunication providers to house equipment at a facility.
- F. "Inhabited Area" means any residence, any other structure regularly occupied by people, or any outdoor area used by people on a regular basis.
- G. "Lattice Tower" means a self-supporting support structure, erected on the ground, which consists of metal crossed strips or bars to support antennas and related equipment.
- H. "Monopole" means a wireless communication facility which consists of a monopolar structure erected on the ground to support wireless communication antennas and connecting appurtenances.
- I. "NIER" means non-ionizing electromagnetic radiation (i.e., electromagnetic radiation primarily in the visible, infrared, and radio frequency portions of the electromagnetic spectrum).
- J. "Public Service Use or Facility" means a use operated or used by a public body or public utility in connection with any of the following services: water, waste or storm water management, public education, parks and recreation, fire and police protection, solid waste management, transportation, or utilities.
- K. "Public Way" means, and includes, all public streets and utility easements, now and hereafter owned by the City, but only to the extent of the City's right, title, interest, or authority to grant a license to occupy and use such streets or easements for telecommunications facilities.
- L. "Quasi-Public Use" means a use serving the public at large, and operated by a private entity under a non-exclusive franchise, or other similar governmental authorization, designed to promote the interests of the general public or operated by a recognized civic organization for the benefit of the general public.
- M. "Readily Visible" means an object that stands out as a prominent feature of the landscape when viewed with the naked eye.
- O. "Related Equipment" means all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit, and connectors.
- P. "Satellite Earth Station" means a telecommunication facility consisting of more than a single satellite dish, smaller than ten (10) feet in diameter, that transmits to and/or receives signals from an orbiting satellite.
- Q. "Silhouette" means a representation of the outline of the towers and antenna associated with a telecommunication facility, as seen from an elevation perspective.
- R. "Structure Ridgeline" means the line along the top of a roof or top of a structure, if it has no roof.

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- S. "Telecommunication Facility" means a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.
- T. "Co-located Telecommunication Facility" means a telecommunication facility comprised of a single telecommunication tower or building supporting one (1) or more antennas, dishes, or similar devices owned or used by more than one (1) public or private entity.
- U. "Commercial Telecommunication Facility" means a telecommunication facility that is operated primarily for a business purpose or purposes.
- V. "Multiple User Telecommunication Facility" means a telecommunication facility comprised of multiple telecommunication towers or buildings supporting one (1) or more antennas owned or used by more than one (1) public or private entity, excluding research and development industries with antennas to serve internal uses only.
- W. "Non-Commercial Telecommunications Facility" means a telecommunication facility that is operated solely for a non-commercial purpose.
- X. "Telecommunications Tower" means a mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than ten (10) feet tall and six (6) inches in diameter supporting one or more antenna, dishes arrays, etc. shall be considered a telecommunications tower.
- Y. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, electromagnetic waves, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

4.1.030 Exempt telecommunication facilities.

- A. "Exempt Telecommunications Facilities" include, but are not limited to, the following unless located within a recognized Historic District:
 - 1. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the residential parcel on which the radio or television antenna is located, with an antenna height not exceeding twenty-five (25) feet) for the ground surface;

A ground or building mounted citizens band radio antenna including any mast, if the height (post and antenna) does not exceed thirty-five (35) feet;
 - 3. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed eighty (80) feet;
 - 4. A ground or building mounted receive-only radio or television satellite dish antenna, which does not exceed thirty-six (36) inches in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel;
 - 5. All citizens band radio antenna or antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of the adoption of this section;

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6. Mobile services providing public information coverage of news events of a temporary nature;
7. Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the Planning and Community Development Director; and
8. City government owned or public service use/facility owned (as described in 4.1.020(J.)) and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, waste water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, public education and transportation with heights not exceeding thirty-five (35) feet.

4.1.040 General requirements.

The following requirements shall be met for all non-exempt Telecommunications Facilities in any zoning district:

- A. Obtain any applicable permit requirements of any agencies which have jurisdiction over the project;
- B. All the requirements established by the other chapters of the OCCGF that are not in conflict with the requirements contained in this chapter;
- C. Compliance with the Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, where applicable;
- D. Compliance with any applicable Airport land use compatibility criteria or policies and Federal Aviation Administration regulations;
- E. Compliance with any applicable easements, or similar restrictions, on the subject property including adopted PUD standards;
- F. Facilities and antennas cannot be located in any required yard setback area of the zoning district in which it is located;
- G. All setbacks shall be measured from the base of the tower or structure closest to the applicable property line or structure;
- H. All commercial telecommunication facilities and antennas shall comply, at all times, with all Federal Communications Commission (FCC) rules, regulations, and standards;
- I. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function; and
- J. All telecommunications carriers and providers engaged in the business of transmitting, supplying, or furnishing of telecommunications originating, or terminating, in the City shall register with the City pursuant to section 4.1.050 of this chapter.

4.1.050 Registration of telecommunications carriers and providers.

- A. All telecommunications carriers and providers that offer, or provide, any telecommunications services for a fee directly to the public, either within the City of Great Falls, or outside the corporate limits from telecommunications facilities within the City,

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shall register with the City pursuant to this article on forms to be provided by the Planning and Community Development Director, which shall include the following:

1. the identity and legal status of the registrant, including any affiliates;
the name, address, and telephone number of the officer, agent, or employee responsible for the accuracy of the registration statement;
 3. a narrative and map description of registrant's existing, or proposed, telecommunications facilities within the City of Great Falls;
 4. a description of the telecommunications services that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses, or institutions within the City;
 5. information sufficient to determine that the applicant has applied for and received any construction permit, operating license, or other approvals required by the Federal Communications Commission (FCC) to provide telecommunications services or facilities within the City; and
 6. such other information as the Planning and Community Development Director may reasonably require.
- B. Each application for registration as a telecommunications carrier or provider shall be accompanied by a non-resident business certificate fee as set forth by City Commission resolution.
- C. The purpose of registration under this section is to:
1. provide the City with accurate and current information concerning the telecommunications carriers and providers who offer, or provide, telecommunications services within the City, or that own or operate telecommunication facilities with the City;
assist the City in enforcement of this chapter;
 3. assist the City in the collection and enforcement of any license fees or charges that may be due the City, and
 4. assist the City in monitoring compliance with local, state, and federal laws.
- D. Each registrant shall inform the City, within sixty (60) days of any change of the information set forth in section 4.1.050.

4.1.060 Use agreement.

No permit approval granted hereunder shall be effective until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the approval to occupy public property of the City will be granted.

4.1.070 Non-exclusive grant.

No approval granted under this section shall confer any exclusive right, privilege, license, or exclusive franchise to occupy or use the public rights of way or easements of the City for delivery of telecommunications services or any other purposes.

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4.1.080 Rights granted.

No approval granted under this section shall convey any right, title, or interest in the public rights of way or easements, but shall be deemed approval only to use and occupy the public ways for the limited purposes and terms stated in the approval. Further, no approval shall be construed as any warranty of title.

4.1.090 Exempt facilities - basic requirements.

Exempt facilities defined in Section 4.1.030 of this chapter may be installed, erected, maintained, and/or operated in any residential zoning district except recognized Historic Districts, where such antennas are permitted under this Title, without benefit of a building permit or other entitlement process, provided all the following conditions are met:

- A. The antenna use involved is accessory to the primary use of the property which is not a telecommunications facility;
- B. In a residential zone, no more than one (1) satellite dish eight (8) feet or less in diameter, is allowed on the parcel and, no more than three (3) support structures for licensed amateur radio operators are allowed on a parcel; and
- C. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

Chapter 2 TELECOMMUNICATION FACILITY REGULATION

Sections:

4.2.010 Telecommunications facilities - minimum application requirements.

4.2.020 Telecommunications facilities - standard agreements required.

4.2.030 Telecommunications facilities - life permits.

4.2.040 Telecommunication facilities - structural requirements

4.2.050 Telecommunications facilities - basic tower and building design.

4.2.060 Telecommunication facilities - location.

4.2.070 Telecommunication facilities - height determination.

4.2.080 Telecommunication facilities - co-located and multiple-user facilities.

4.2.090 Telecommunications facilities - lighting.

4.2.100 Telecommunications facilities - roads and parking.

4.2.110 Telecommunications facilities - vegetation protection and facility screening.

4.2.120 Telecommunication facilities - fire prevention.

4.2.130 Telecommunication facilities - environmental resource protection.

4.2.140 Telecommunications - noise and traffic.

4.2.150 Telecommunication facilities - visual compatibility.

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- 4.2.160 Telecommunications facilities - NIER exposure.
- 4.2.170 Telecommunication facilities - exemptions.
- 4.2.180 Telecommunication facilities - public notice.
- 4.2.190 Ambiguity.
- 4.2.200 Appeal.
- 4.2.210 Statutory severability.

4.2.010 Telecommunications facilities - minimum application requirements.

The following are the minimum application criteria applicable to all non-exempt telecommunication facilities. In the event that a project is subject to discretionary and/or environmental review, mitigation measures, or other conditions may also be necessary. All non-exempt Telecommunications Facilities shall comply with the following:

- A. The Planning and Community Development Director shall establish, and maintain, a list of information that must accompany every application for the installation of a telecommunications facility. Said information may include, but shall not be limited to:
 - 1. completed supplemental project information forms;
 - 2. a specific maximum requested gross cross-sectional area, or silhouette, of the facility;
 - 3. service area maps, network maps, alternative site analysis, visual impact demonstrations including mock-ups and/or photo-montages;
 - 4. visual impact analysis;
 - 5. NIER (non-ionizing electromagnetic radiation) exposure studies;
 - 6. title reports identifying legal access, security considerations, lists of other nearby telecommunication facilities known to the City;
 - 7. master plan for all related facilities within the City limits and within one-quarter (¼) mile there from; and
 - 8. facility design alternatives to the proposal and deposits for peer review, if deemed necessary by the Director.
- B. The Planning and Community Development Director may release an applicant from having to provide one (1) or more of the pieces of information on this list, upon a finding that in the specific case involved, said information is not necessary to process, or make a decision regarding, the application being submitted;
- C. The Planning and Community Development Director is explicitly authorized, at his/her discretion to employ on behalf of the City, an independent technical expert to review any technical materials submitted including, but not limited to, those required under this section and in those cases where a technical demonstration of unavoidable need, or unavailability of alternatives, is required. The applicant shall pay all the costs of said review, including any administrative costs incurred by the City.
- D. A permit shall be issued by the Planning and Community Development Department when the minimum application requirements have been met.

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4.2.020 Telecommunications facilities - standard agreements required.

- A. A maintenance/facility removal agreement signed by the applicant shall be submitted to the Planning and Community Development Director, prior to approval of the building permit or other entitlement, for use authorizing the establishment or modification of any telecommunications facility which includes:
 - 1. a telecommunication tower;
one (1) or more new buildings/equipment enclosures larger in aggregate than three hundred (300) square feet;
 - 3. more than three (3) satellite dishes of any size; or
 - 4. a satellite dish larger than four (4) feet in diameter.
- B. Said agreement shall bind the applicant, and the applicant's successors-in-interest, to properly maintain the exterior appearance of, and ultimately the removal of, the facility in compliance with the provisions of this chapter and any conditions of approval.
- C. The agreement shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City for all costs incurred to perform any work required of the applicant by this agreement that the applicant fails to perform.
- D. The agreement shall also specifically authorize the City and/or its agents to enter onto the property and undertake any performance pursuant to the agreement under the following conditions:
 - 1. The Planning and Community Development Director has first provided the applicant the following written notices:
 - i. an initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least forty-five (45) calendar days to complete it; and
 - ii. a follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the City's intent to commence the required work within ten (10) working days.
- E. The applicant may file an appeal pursuant to section 4.2.200 within fourteen (14) working days of the notice required under this Title. If an appeal is filed, the City shall be authorized to enter the property and perform the necessary work; if the appeal is dismissed or final action taken in favor of the City.
- F. All costs incurred by the City to undertake any work required to be performed by the applicant, pursuant to the agreement, referred to in Section 4.1.060 including, but not limited to, administrative and job supervision costs, shall be borne solely by the applicant. The agreement shall specifically require the applicant to immediately cease operation of the telecommunication facility involved, if the applicant fails to pay the moneys demanded within ten (10) working days. It shall further require that operation remain suspended until such costs are paid in full.
- G. The standard agreement required by Section 4.1.060 shall include, but not be limited to, the following stipulations agreed to by the applicant:
 - 1. Owners of telecommunication facilities shall be strictly liable for any and all sudden, accidental, and gradual pollution resulting from their use within the City of Great Falls. This liability shall include cleanup, intentional injury, or damage to persons or property. Additionally, telecommunication facilities lessors shall be responsible for any sanctions, fines, or other monetary costs imposed as a result of the release of pollutants from their operations.

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2. The telecommunication facility provider shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the City, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state law, federal regulations, and/or local ordinances. The City shall promptly notify the provider(s) of any such claim, action, or proceeding. The City shall have the option of coordinating in the defense. Nothing contained in this stipulation shall prohibit the City from participating in a defense of any claim, action, or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

4.2.030 Telecommunications facilities - life permits.

- A. A permit issued pursuant to this chapter, authorizing establishment of a non-exempt telecommunication facility, shall be reviewed every year.
- B. Costs associated with the review process shall be borne by the telecommunication facility owner/provider.
- C. Grounds for revocation of the permit shall be limited to a finding that:
 1. the use involved is no longer allowed in the applicable zoning district;
the facility fails to comply with the relevant requirements of this Title as they exist at the time of renewal and the permittee has failed to supply assurances acceptable to the Planning and Community Development Director that the facility will be brought into compliance within one hundred twenty (120) calendar days;
 3. the permittee has failed to comply with the conditions-of-approval imposed;
 4. the facility has not been properly maintained; or
 5. the facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology that exists at the time of renewal and is consistent with the provisions of universal service at affordable rates.
- D. The grounds for appeal of issuance of a renewal shall be limited to a showing that one (1) or more of the situations listed above do in fact exist or that the notice required under this Title was not provided.
- E. If a permit for use is not renewed, it shall automatically become null and void without notice or hearing two (2) years after it is issued or upon cessation of use for more than a year and a day, whichever comes first.
- F. Unless a new permit or entitlement of use is issued, within one hundred twenty (120) calendar days, thereafter all improvements installed including their foundations down to three (3) feet below ground surface shall be removed from the property, and the site shall be restored to its natural pre-construction state within one hundred twenty (120) calendar days of non-renewal or abandonment.
- G. Any access road installed shall also be removed and the ground returned to its natural condition unless the property owner establishes to the satisfaction of the Planning and Community Development Director that these sections of road are necessary to serve some other allowed use of the property, that is permitted, or is currently present or to provide access to adjoining parcels.

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4.2.040 Telecommunication facilities - structural requirements

- A. No telecommunication facility shall be designed, and/or sited, such that it poses a potential hazard to nearby residences or surrounding properties or improvements.
- B. Any non-exempt telecommunication tower, located at a distance of less than one hundred ten (110) percent of its height from an inhabited area or other tower shall be designed, and maintained to withstand without failure, the maximum forces expected from wind and earthquakes when the tower is fully loaded with antennas, transmitters and other equipment, and camouflaging.
- C. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the Building Official prepared by a structural engineer, licensed by the State of Montana, describing;
 - 1. The tower structure;
Specifying the number and type of antennas it is designed to accommodate; and
 - 3. Providing the basis for the calculations done, and documenting the actual calculations performed.
- D. Proof of ongoing compliance shall be provided via submission to the Planning and Community Development Director at least every five (5) (self-supporting and guyed towers)/ten (10) (monopoles) years of an inspection report prepared by a Montana-licensed structural engineer indicating the number and types of antennas and related equipment actually present and indicating the structural integrity of the tower. Based on this report, the Building Official may require repair or, if a serious safety problem exists, removal of the tower.

4.2.050 Telecommunications facilities - basic tower and building design.

All non-exempt telecommunication facilities shall be designed to blend into the surrounding environment to the greatest extent feasible. All the following measures shall be implemented:

- A. Telecommunication towers shall be constructed out of metal, or other non-flammable material, unless specifically conditioned by the City to be otherwise;
- B. Telecommunication towers taller than thirty-five (35) feet shall be monopoles or guyed/lattice towers, except where satisfactory evidence is submitted to the Planning and Community Development Director that a self-supporting tower is required to provide the height, and/or capacity, necessary for the proposed telecommunication use to minimize the need for screening from adjacent properties, or to reduce the potential for bird strikes;
- C. Satellite dishes, other than microwave dishes, shall be of mesh construction, except where technical evidence is acceptable to the Planning and Community Development Director is submitted showing that this is infeasible;
- D. Telecommunication support facilities (i.e., vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of non-reflective materials (visible exterior surfaces only) and shall be placed in underground vaults to all extent possible;

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- E. Telecommunication support facilities shall be no taller than one (1) story (fifteen (15) feet) in height and shall be treated to look like a building or facility typically found in the area;
- F. Telecommunication support facilities in areas of high visibility shall, where possible, be sited below the ridgeline or designed (i.e., placed underground, depressed, or located behind earth berms) to minimize their profile;
- G. All buildings, poles, towers, antenna supports, antennas, and other components of each telecommunication site, shall be initially painted and thereafter repainted as necessary with a "flat" paint. The color selected shall minimize their visibility to the greatest extent feasible;
- H. Improvements, which will be primarily viewed against soils, trees, or grasslands shall be painted colors matching these landscapes, while elements which rise above the horizon shall be painted a blue gray that matches the typical sky color at that location;
- I. The project description, and permit, shall include a specific maximum allowable gross cross-sectional area, or silhouette, of the facility;
- J. The silhouette shall be measured from the "worst case" elevation perspective;
- K. The City shall have the authority to require special design of the telecommunication facilities, where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views and/or community features);
- L. Antennas, and supporting electrical/mechanical equipment, installed on the rooftop or above a structure shall be screened, constructed, and/or colored to match the structure to which they are attached; and
- M. Telecommunication facilities shall ensure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

4.2.060 Telecommunication facilities - location.

- A. Telecommunication facilities (antennas and towers) are permitted in residential districts when they are designed as an architecturally compatible accessory element to an existing non-residential use such as schools, churches, etc. and antennas mounted on existing non-residential structures (subject to location and height restrictions). These permitted antennas/towers shall be limited to forty-five (45) feet in height above original grade and are subject to site plan approval by the Design Review Board.
- B. Antennas and towers are permitted in Commercial (LB, GC, B1, B2, B3, B4 & CLM), Public Lands Institutional (PLI) and Industrial Districts subject to the following height limitations:
 - 1. Towers/antennas are permitted to a maximum height of one hundred (100) feet in Industrial Districts;

Fifty (50) additional feet may be added to accommodate co-location, if the applicant submits information certifying the capacity of the tower for two (2) additional providers and a letter of intent, from the applicant, indicating their intent to share space;
 - 3. A lightning rod, not to exceed ten (10) feet, shall not be included within the height limitations;
 - 4. A setback, equal to twenty-five (25) percent of the tower height, must be maintained and the facilities are subject to site plan approval by the Design Review Board;

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5. Ground mounted towers/antennas, permitted in Commercial and PLI Districts, are limited to a maximum height of forty-five (45) feet;
 6. A setback, equal to twenty-five (25) percent of the tower height, must be maintained and the facilities are subject to site plan approval by the Design Review Board; and
 7. Permitted telecommunications facilities, in Commercial and PLI Districts, that are building mounted can have a tower/antenna height equal to the distance to the nearest edge of the roof.
- C. All telecommunication facilities shall be located so as to minimize their visibility and the number of distinct facilities present. All of the following measures shall be implemented for all exempt telecommunications facilities, as defined in Section 4.1.030:
1. No telecommunication facility shall be installed within the influence zone of the Great Falls International Airport, or any helipad, unless the airport owner/operator indicates that it will not adversely affect the operation of the airport or helipad;

No telecommunication facility shall be installed at a location where special painting, or lighting, will be required by the FAA regulations, unless technical evidence acceptable to the Planning and Community Development Director is submitted showing that this is the only technically feasible location for this facility;
 3. No telecommunication facility shall be installed on an exposed ridgeline, in or at a location readily visible from Highway I-15, a public trail, public park, or other outdoor recreation area, or in property designated as a Floodway unless it blends with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable and a finding is made that no other location is technically feasible;
 4. No telecommunication facility that is readily visible from off-site shall be installed closer than one-half ($\frac{1}{2}$) mile from another readily visible uncamouflaged or unscreened telecommunication facility, unless it is a co-located facility, situated on a multiple-user site, or blends with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable; or technical evidence acceptable to the Planning and Community Development Director is submitted showing a clear need for this facility and the unfeasibility of co-locating it on one (1) of these former sites;
 5. No telecommunication facility, that is readily visible from off-site, shall be installed on a site that is not already developed with telecommunication facilities, or other public or quasi-public uses, unless it blends with the surrounding existing natural and man-made environment in such a manner so as to be effectively unnoticeable or technical evidence acceptable to the Planning and Community Development Director is submitted, showing a clear need for this facility, and the unfeasibility of co-locating it on one (1) of these former sites;
 6. Telecommunication towers shall be set back at least twenty-five (25) percent of the tower height from all property lines;
 7. Any tower or antenna located less than one hundred ten (100) percent of its height from an inhabited area must meet the requirements set forth in Section 4.2.130; and
 8. Guy wire anchors shall be set back at least twenty (20) feet from any property line.

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4.2.070 Telecommunication facilities - height determination.

- A. The height of a telecommunication tower shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto.
- B. In the case of building-mounted towers, the height of the tower includes the height of the portion of the building on which it is mounted.
- C. In the case of "crank-up" or other similar towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised.

4.2.080 Telecommunication facilities - co-located and multiple-user facilities.

- A. An analysis shall be prepared by, or on behalf of, the applicant, which identifies all reasonable, technically feasible, and alternative locations or facilities which would provide the proposed telecommunication service. The intention of the alternatives analysis is to present alternative strategies which would minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the City and surrounding rural and urban areas.
- B. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to a finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative site. The City may require independent verification of this analysis at the applicant's expense. Facilities which are not proposed to be co-located with another telecommunication facility shall provide a written explanation why the subject facility is not a candidate for co-location.
- C. All co-located and multiple-user telecommunication facilities shall be designed to promote facility and site sharing. Telecommunication towers, and necessary appurtenances, including but not limited to, parking areas, access roads, utilities, and equipment buildings shall be shared by site users when, in the determination of the Planning and Community Development Director, it will minimize overall visual impact to the community.
- D. The facility shall make available unused space for co-location of other telecommunication facilities, including space for these entities providing similar, competing services. A good faith effort in achieving co-location shall be required of the host entity.
- E. Requests for utilization of facility space and responses to such requests shall be made in a timely manner, in writing, and copies shall be provided to the City's permit files. Unresolved disputes may be mediated by the Board of Adjustment/Appeal.
- F. Co-location is not required in cases where the addition of the new service or facilities would cause quality of service impairment to the existing facility, or if it became necessary for the host to go off-line for a significant period of time.
- G. Approval for the establishment of facilities improved with an existing microwave band, or other public service use or facility, which creates interference or interference is anticipated, as a result of said establishment of additional facilities, shall include provisions for the relocation of said existing public use facilities. All costs associated with said relocation shall be borne by the applicant for the additional facilities.

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4.2.090 Telecommunications facilities - lighting.

All telecommunication facilities shall be unlit, except for the following:

- A. A manually-operated, or motion-detector controlled, light above the equipment shed door which shall be kept off except when personnel are actually present at night;
- B. The minimum tower lighting required under FAA regulation; and
- C. Where tower lighting is required, it shall be shielded, or directed to the greatest extent possible, in such a manner as to minimize the amount of light that falls onto nearby properties.

4.2.100 Telecommunications facilities - roads and parking.

All non-exempt telecommunication facilities shall be served by the minimum roads and parking areas necessary. The following measures shall be implemented:

- A. Existing roads shall be used for access, built using Portland or asphaltic concrete, and be upgraded the minimum amount necessary to meet standards specified by the Director of Public Works, or designee, and applicable OCCGF provisions;
- B. Any new roads or parking areas built shall, whenever feasible, be shared with subsequent telecommunication facilities or other permitted uses;
- C. Newly constructed roads shall meet the width and structural requirements of the Director of Public Works or designee;
- D. Existing parking areas shall, whenever possible, be used; and
- C. Any new parking areas constructed shall be kept to a minimum and will be done in Portland or asphaltic concrete.

4.2.110 Telecommunications facilities - vegetation protection and facility screening.

All telecommunications facilities shall be installed in such a manner to maintain and enhance existing native vegetation and to install suitable landscaping to screen the facility, where necessary. The following measures shall be implemented for all non-exempt telecommunication facilities:

- A. A landscape plan shall be submitted with project application submittal indicating all existing vegetation, identifying landscaping that is to be retained on the site, and any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses and public view areas;
- B. The landscape plan shall be subject to approval during the site plan review process;
- C. All trees, larger than four (4) inches in diameter shall be identified in the landscape plan with indication of species type, diameter at four and one-half (4½) feet high, and whether it is to be retained or removed with project development;
- D. Existing trees, and other screening vegetation in the vicinity of the facility, along the access roads and power/telecommunication line routes involved shall be protected from damage, both during the construction period and thereafter;

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- E. All areas disturbed during project construction other than the access road and parking areas required under Section 4.2.100 shall be replanted with vegetation compatible with the vegetation in the surrounding area (e.g., ornamental shrubs or natural brush, depending upon the circumstances) to the satisfaction of the Planning and Community Development Director or designee;
- D. Any existing trees or significant vegetation on the site, or along the affected access area, that die shall be replaced with native trees and vegetation of a size and species acceptable to the Planning and Community Development Director or designee; and
- E. No actions shall be taken subsequent to project completion with respect to the vegetation present that would increase the visibility of the facility itself or the access road and power or telecommunication lines serving it.

4.2.120 Telecommunication facilities - fire prevention.

All telecommunication facilities shall be designed, and operated in such a manner, to minimize the risk of igniting a fire or intensifying one (1) that otherwise occurs. The following measures shall be implemented for all non-exempt telecommunication facilities:

- A. At least one-hour fire resistant interior surfaces shall be used in the construction of all buildings;
- B. Monitored automatic fire extinguishing systems shall be installed in all equipment buildings and enclosures;
- C. Rapid entry systems shall be installed; and
- D. All tree trimmings, and trash generated by construction of the facility, shall be removed from the property and properly disposed of prior to building permit finalization or commencement of operation, whichever comes first.

4.2.130 Telecommunication facilities - environmental resource protection.

All telecommunication facilities shall be sited to minimize the effect on environmental resources. The following measures shall be implemented for all non-exempt telecommunication facilities:

- A. No telecommunications facility, or related improvements, shall be sited such that their construction will damage an archaeological site or have an adverse effect on the historic character of a historic feature or site;
- B. No telecommunications facility shall be sited such that its presence threatens the health or safety of migratory birds;
- C. The facility shall comply with all applicable Floodplain Hazard Management Regulations and Storm Drainage Control regulations;
- D. Potential adverse visual impacts which might result from project related grading or road construction shall be minimized;
- E. Potential adverse impacts upon nearby public use areas such as parks or trails shall be minimized; and
- F. Drainage, erosion, and sediment controls shall be required as necessary to avoid soil erosion and sedimentation of waterways;

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- G. Structures and roads on slopes of ten (10) percent or greater shall be avoided;
- H. Erosion control measures shall be incorporated for any proposed facility which involves grading or construction near a waterway or on lands with slopes over ten (10) percent; and
- I. Natural vegetation and topography shall be retained to the extent feasible.

4.2.140 Telecommunications - noise and traffic.

All telecommunication facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to the residents of nearby homes and the users of nearby recreational areas such as public parks and trails. The following measures shall be implemented for all non-exempt:

- A. Outdoor noise producing construction activities shall only take place on weekdays (Monday through Friday, non-holiday) between the hours of 7:30 a.m. and 5:30 p.m. unless allowed at other times by the Planning and Community Development Director or designee;
- B. Backup generators shall only be operated during power outages and for testing and maintenance purposes;
- C. If the facility is located within one hundred (100) feet of a residential dwelling unit, noise attenuation measures shall be included to reduce noise levels to an exterior noise level of at least a Ldn of fifty (50) dB at the property line and an interior noise level of a Ldn of forty-five (45) dB;
- D. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.; and
- C. Traffic shall be kept to an absolute minimum, but in no case more than two (2) round trips per day on an average annualized basis once construction is complete.

4.2.150 Telecommunication facilities - visual compatibility.

The following measures shall be implemented for all non-exempt telecommunication facilities:

- A. Facility structures and equipment shall be located, designed, and screened to blend with the existing natural or built surroundings so as to reduce visual impacts to the extent feasible, considering the technological requirements of the proposed telecommunication service and the need to be compatible with neighboring residences and the character of the community;
- B. The facility shall be designed to blend with the any existing supporting structure and does not substantially alter the character of the structure or local area;
- C. Following assembly and installation of the facility, all waste and debris shall be removed and disposed of in a lawful manner;
- D. A visual analysis, which may include photo montage, field mock up, or other techniques shall be prepared by, or on behalf of, the applicant which identifies the potential visual impacts, at design capacity, of the proposed facility to the satisfaction of the Planning and Community Development Director or designee;

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- E. Consideration shall be given to views from public areas as well as from private residences;
- F. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunication service; and
- G. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.

4.2.160 Telecommunications facilities - NIER exposure.

The following measures shall be implemented for all non-exempt telecommunication facilities:

- A. No telecommunication facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. No telecommunication facility or combination of facilities shall produce at any time power densities in any inhabited area as this term is defined in Section 4.1.030 that exceed the ANSI (American National Standards Institute) C95. 1-1992 standard for human exposure or any more restrictive standard subsequently adopted or promulgated by the City, County, the State of Montana, or the federal government.
- B. Initial compliance with this requirement shall be demonstrated for any facility within four hundred (400) feet of residential uses or sensitive receptors such as schools, churches, hospitals, etc., and all broadcast radio and television facilities, regardless of adjacent land uses, through submission, at the time of application for the necessary permit or entitlement, of NIER (Nonionizing Electromagnetic Radiation calculations) specifying NIER levels in the inhabited area where the levels produced are projected to be highest. If these calculated NIER levels exceed eighty (80) percent of the NIER standard established by this Section, the applicant shall hire a qualified electrical engineer licensed by the State of Montana to measure NIER levels at said location after the facility is in operation. A report of these measurements and his/her findings with respect to compliance with the established NIER standard shall be submitted to the Planning and Community Development Director or designee. Said facility shall not commence normal operations until it complies with, or has been modified, to comply with this standard. Proof of said compliance shall be a certification provided by the engineer who prepared the original report. In order to assure the objectivity of the analysis, the City may require at the applicant's expense, independent verification of the results of the analysis.
- C. Every telecommunication facility within four hundred (400) feet of an inhabited area, and all broadcast radio and television facilities, shall demonstrate continued compliance with the NIER standard established by this section. Every five (5) years, a report listing each transmitter and antenna present at the facility, and the effective radiated power radiated, shall be submitted to the Planning and Community Development Director or designee. If either the equipment or effective radiated power has changed, calculations specifying NIER levels in the inhabited areas where said levels are projected to be highest shall be prepared.
- D. NIER calculations shall also be prepared every time the adopted NIER standard changes. If calculated levels, in either of these cases, exceed eighty (80) percent of the standard established by this section, the operator of the facility shall hire a qualified electrical engineer licensed by the State of Montana to measure the actual NIER levels produced. A report of these calculations, required measurements, if any, and the author's/engineer's findings with respect to compliance with the current NIER standard shall be submitted to the Planning and Community Development Director within five (5)

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years of facility approval and every five (5) years thereafter. In the case of a change in the standard, the required report shall be submitted within ninety (90) days of the date said change becomes effective.

- D. Failure to supply the required reports or to remain in continued compliance with the NIER standard established by this section shall be grounds for revocation of the use permit or other entitlement.

4.2.170 Telecommunication facilities - exemptions.

- A. Exceptions to the requirements specified within this chapter may be granted by the City Commission. Such a permit may only be approved if the City Commission finds, after receipt of sufficient evidence, that failure to adhere to the standard under consideration in the specific instance will not increase the visibility of the facility or decrease public safety.
- B. Tower setback requirements may be waived under any of the following circumstances:
 - 1. The facility is proposed to be co-located onto an existing, legally-established telecommunication tower; and

Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible.
- C. Telecommunication facilities existing, or operating, in violation of this chapter, without and exception pursuant to this section are hereby declared to be a nuisance as defined by OCCGF Title 8, Chapter 49.

4.2.180 Telecommunication facilities - public notice.

In addition to the notices required within section 4.2.140, the following special noticing shall be provided:

- A. Notice of consideration on a permit authorizing the establishment or modification, of a telecommunication facility shall be provided to the operators of all telecommunication facilities, registered with the City of Great Falls pursuant to Section 4.1.060, within one (1) mile of the subject parcel via mailing of the standard legal notice prepared; and
- B. Notice of the permit approval authorizing the establishment or modification of, or the renewal of a permit for, a telecommunication facility or minor antenna needing site plan review, shall be mailed to all adjacent property owners within three hundred (300) feet. Mailing of said notice shall start a fourteen (14) calendar day appeal period.

4.2.190 Ambiguity.

In order to achieve consistent and efficient coordination and enforcement in the administration of this chapter, the Planning and Community Development Director, or designee, shall have the power and duty to interpret this chapter to members of the public, to City departments and other branches of City government, including preliminary negotiation with, and advice to, applicants for administrative approval, subject to the policy of the City Commission. Said duties shall be carried out in consultation with the Director of Public Works and the City Manager.

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4.2.200 Appeal.

Any person who disagrees with a ruling or interpretation of the Planning and Community Development Director or designee regarding this chapter, unless otherwise specified in this Title, may appeal the matter to the Board of Adjustment/Appeal subject to the following conditions:

- A. Said appeal shall be made in writing within fourteen (14) calendar days of the ruling or interpretation;
- B. The Planning and Community Development Director, or designee, will then cause the matter to be placed on the agenda of the Board of Adjustment/Appeal, if no appeal is made within that time, the ruling or interpretation shall be final;
- C. The appeal shall set forth in writing the grounds for the appeal and the relief sought by the appellant;
- D. The hearing shall be scheduled within sixty (60) calendar days;
- E. The Planning and Community Development Director, or designee, shall notify in writing all persons who have demonstrated their interest in this matter of the time and place of the meeting on the appeal at least ten (10) calendar days prior to the meeting;
- F. The Planning and Community Development Director or designee shall transmit the application, and all exhibits therewith, to the Board of Adjustment/Appeal for consideration;
- G. For the purposes of this section, a ruling is a discretionary action, e.g., on a permit or a site plan and architectural review; and an interpretation refers to the determination of the intent and application of provisions of this chapter;
- H. Application or enforcement of provisions of this chapter shall not be considered interpretations or rulings and are not subject to appeal;
- I. Notwithstanding this section, an individual may file for an exception from the provisions of this chapter pursuant to Section 4.2.190 of this chapter; and
- J. For the purposes of this Title, the applicant shall bear the burden of proof in any proceedings brought to the Board of Adjustment.

4.2.210 Statutory severability.

If any section, subsection, sentence, clause or phrase, or word of this chapter is, for any reason, held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

(Ord. 3171, 2017).