

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 27.68 of the Lincoln Municipal Code relating
2 to Personal Wireless Facilities by amending Sections 27.68.020, 27.68.030, 27.68.120, and
3 27.68.130 to modify the definitions of “abandonment” and “partial abandonment”; to modify
4 administrative permit provisions; and to delete provisions regarding the initial term and renewal of
5 special permits and administrative permits; repealing Sections 27.68.040, 27.68.050, 27.68.060, and
6 27.68.070 of the Lincoln Municipal Code in their entirety; and repealing Sections 27.68.020,
7 27.68.030, 27.68.120, and 27.68.130 of the Lincoln Municipal Code as hitherto existing.

8 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

9 Section 1. That Section 27.68.020 of the Lincoln Municipal Code be amended to read
10 as follows:

11 **27.68.020 Definitions.**

12 For the purpose of this chapter, the following terms shall have the meaning ascribed to them
13 below:

14 **Abandonment**, in the case of a co-located or non- co-located facility, shall mean: (a) failure
15 to start operations within ~~90~~ 180 days of completion of the structure, or (b) to cease operation for a
16 period of ~~90~~ 180 or more consecutive days. ~~In the case of a co-located facility, abandonment shall~~
17 ~~mean: (a) failure to start operations within 180 days of completion of the structure, or (b) to cease~~
18 ~~operation for a period of 180 or more consecutive days.~~ In the event that factors beyond a provider’s
19 control postpone the start of or cause the temporary cessation of operations of a co-located or
20 non-co-located facility, the time limitations specified herein shall be extended for such period of
21 delay.

22 **Administrative permit** shall mean a process and approval by the Planning Director as
23 described in this chapter.

1 **Antenna** shall mean any exterior apparatus designed for telephonic, radio, data, Internet, or
2 video communications through the sending and/or receiving of electromagnetic waves, and includes
3 equipment attached to a tower or building for the purpose of providing personal wireless services,
4 including unlicensed wireless telecommunications services, wireless telecommunications services
5 utilizing frequencies authorized by the Federal Communications Commission for “cellular”,
6 “enhanced specialized mobile radio”, “specialized mobile radio” and “personal communications
7 services”, telecommunications services, and its attendant base station.

8 **Antenna support structure** shall mean any pole, telescoping mast, tower, tripod, or other
9 structure which supports a device used in the transmitting or receiving of radio frequency signals.

10 **Array** shall mean a set of antennas for one carrier or service that are placed on a structure
11 at a given height and spaced so as to avoid interference.

12 **Camouflage** describes a personal wireless service facility that is disguised, hidden, or
13 integrated with an existing structure or a personal wireless service facility that is placed within an
14 existing or proposed structure so as to be effectively hidden from view.

15 **Co-location** shall mean the location of antenna or an array of antennas on a personal wireless
16 facility or antenna support structure by more than one personal wireless service provider.

17 **Design** shall mean the appearance of personal wireless service facilities, including such
18 features as their materials, colors, texture, scale, and shape.

19 **EIA** shall mean the Electronics Industry Association.

20 **Equipment enclosure** shall mean a structure, shelter, cabinet, or vault used to house and
21 protect the electronic equipment necessary for processing wireless communication signals and
22 associated equipment. Associated equipment may include air conditioning, backup power supplies
23 and emergency generators.

24 **FAA** shall mean the Federal Aviation Administration.

25 **FCC** shall mean the Federal Communications Commission.

26 **Fall zone** shall mean the area on the ground within a prescribed radius from the base of a
27 personal wireless service facility within which there is a potential hazard from falling debris or
28 collapsing material.

29 **Governing authority** shall mean the City Council of the City of Lincoln.

30 **Height** shall mean the vertical distance above grade to the highest point of the antenna
31 support structure, including the lightning rod and antenna.

32 **Mount** shall mean the structure or surface upon which personal wireless service facilities are
33 mounted. There are three types of mounts: (i) Building mounted – a personal wireless service
34 facility affixed to the roof or side of a building; (ii) Ground mounted – a personal wireless service
35 facility fixed to the ground such as a tower; and (iii) Structure mounted – a personal wireless service
36 facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

1 **Partial abandonment** in the case of a facility shall mean to cease use of a portion of the
2 antenna support structure for a period of 180 or more consecutive days.

3 **Personal wireless service, personal wireless service facilities, personal wireless facilities**
4 **and facilities** used in this chapter shall be defined in the same manner as in Title 47, United States
5 Code, Section 332 (c)(7)(C), as they may be amended now or in the future and includes facilities for
6 the transmission and reception of radio or microwave signals used for communication, cellular
7 phone, personal communications services, enhanced specialized mobile radio, and any other wireless
8 services licensed by the FCC and unlicensed wireless services.

9 **Provider** shall mean every corporation, company, association, joint stock company, firm,
10 partnership, limited liability company, other entity and individual which provides personal wireless
11 service over personal wireless service facilities.

12 **Screening** shall mean materials which effectively hide personal wireless facilities from view,
13 or landscaping in accordance with the requirements of the “Design Standards for Zoning.”

14 **Security barrier** shall mean a wall, fence, or berm that has the purpose of sealing a personal
15 wireless service facility from unauthorized entry or trespass.

16 **Site** shall mean a tract or parcel of land that contains personal wireless service facilities
17 including any antenna, support structure, building, accessory buildings, and parking and may include
18 other uses associated with and ancillary to personal wireless services.

19 **Special permit** shall mean a process and approval as currently described in Chapter 27.63
20 of the Zoning Ordinance, or as otherwise set forth in City ordinances or regulations.

21 **Tower** shall mean any structure that is designed, constructed or used for the primary purpose
22 of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or
23 monopole towers. The term encompasses personal wireless service facilities including microwave
24 towers, common-carrier towers, cellular telephone towers or personal communications services
25 towers, alternative tower structures, and the like.

26 **Unlicensed wireless services** shall mean commercial mobile services that operate on public
27 frequencies and do not need a FCC license.

28 Section 2. That Section 27.68.030 of the Lincoln Municipal Code be amended to read
29 as follows:

30 **27.68.030 Permits Required.**

31 (a) No person shall locate an antenna or tower for personal wireless services or alter an
32 existing personal wireless services facility upon any lot or parcel except as provided in this chapter.

33 (b) Maintenance or repair of a personal wireless service facility and related equipment,
34 excluding structural work or changes in height, dimensions, towers, or buildings, is excluded from

1 the requirement to obtain an administrative or special permit. However, building permits may still
2 be required.

3 (c) Installation of personal wireless service facilities requires either an administrative
4 permit issued by the Planning Director or approval of a special permit by the Planning Commission,
5 except co-location on existing wireless facilities previously authorized by either an administrative
6 permit or special permit.

7 (1) Administrative Permit: In any zoning district, the Planning Director may issue
8 an administrative permit approving an application to replace an existing tower or to co-locate
9 ~~additional antennas on a camouflaged facility or rooftop facility, or facility subject to an existing~~
10 ~~special permit~~, if the application does not exceed the permitted height in the district or the height as
11 allowed by special permit, and will have minimal adverse effect on the surrounding property,
12 entryway corridors to the City, Capitol Environs District, Capitol View Corridors as described in
13 Section 27.56.017, landmarks or landmark districts designated in accordance with Chapter 27.57,
14 or properties listed or eligible to be listed on the National Register of Historic Places.

15 Within 45 days of receiving a complete application, the Planning Director shall act
16 on the request for an administrative permit, or shall refer the application to the Historic Preservation
17 Commission, Nebraska Capitol Environs Commission, and/or Planning Commission for public
18 hearing as may required under Chapter 27.56, Chapter 27.57, or Chapter 27.63 of the Lincoln
19 Municipal Code, or the other requirements of this Code.

20 If a request for an administrative permit is not acted upon within 45 days, or is denied,
21 or the conditions imposed thereon are unacceptable to the applicant, then the applicant may, by
22 written notice to the Planning Director, convert the request for an administrative permit to an
23 application for a special permit. Moreover, an applicant may, in lieu of and without first seeking an
24 administrative permit hereunder, request a special permit for its proposed facility.

25 (2) Special Permit: All towers and additions to existing facilities not issued or
26 eligible for an administrative permit and all requests for a special permit shall be reviewed and
27 evaluated, according to the procedure established in Chapter 27.63 of the Lincoln Municipal Code.
28 In the event that the proposed special permit is denied by the Planning Commission, no new request
29 shall be made for the same or substantially similar administrative or special permit within a period
30 of three months after denial thereof.

1 Any decision to deny a special permit under this chapter shall be made in writing and
2 shall state the specific reasons for the denial. Any denial by the Planning Commission may be
3 appealed to the City Council. Any denial by the City Council shall be deemed a final administrative
4 decision, subject to judicial review and appeal.

5 Section 3. That Section 27.68.040 of the Lincoln Municipal Code be and the same
6 is hereby repealed.

7 ~~**27.68.040 — Term of Permit.**~~

8 ~~— An administrative or special permit granted hereunder shall be in effect for a term of fifteen~~
9 ~~years unless it is sooner terminated due to abandonment or failure to comply with this Code.~~

10 Section 4. That Section 27.68.050 of the Lincoln Municipal Code be and the same
11 is hereby repealed.

12 ~~**27.68.050 — Renewal Applications.**~~

13 ~~— A permittee that desires to renew its administrative or special permit hereunder shall, not~~
14 ~~more than 365 days nor less than 90 days before expiration of the current permit, file an application~~
15 ~~with the City for renewal of its permit which shall include the applicable information required~~
16 ~~pursuant to the permit application.~~

17 Section 5. That Section 27.68.060 of the Lincoln Municipal Code be and the same
18 is hereby repealed.

19 ~~**27.68.060 — Renewal Determinations.**~~

20 ~~— After receiving a complete application hereunder, the Planning Director in the case of an~~
21 ~~administrative permit and the Planning Commission in the case of a special permit, shall make a~~
22 ~~determination granting or denying the renewal application in whole or in part. If the renewal~~
23 ~~application is denied, the determination shall include the reasons for non-renewal. The standards~~
24 ~~enumerated in this Code shall apply when determining to grant or deny the application, plus a~~
25 ~~determination of the applicant's compliance with the requirements of this Code.~~

26 Section 6. That Section 27.68.070 of the Lincoln Municipal Code be and the same
27 is hereby repealed.

28 ~~**27.68.070 — Obligation to Cure As a Condition of Renewal.**~~

29 ~~— No permit shall be renewed until any ongoing violations or defaults in the permittee's~~
30 ~~performance of the requirements of this Code, and all applicable laws, statutes, codes, ordinances,~~
31 ~~rules and regulations have been cured, or a plan detailing the corrective action to be taken by the~~
32 ~~permittee has been approved by the City.~~

33 Section 7. That Section 27.68.120 of the Lincoln Municipal Code be amended to read
34 as follows:

1 **27.68.120 General Requirements.**

2 The personal wireless service provider shall comply at all times with the current applicable
3 FCC and FAA standards and regulations, and any of those of other agencies of the federal
4 government with authority to regulate towers and antennas.

5 (a) Building Codes; Safety Standards. To ensure the structural integrity of towers, the
6 owner of a tower shall ensure that it is maintained in compliance with standards contained in
7 applicable City building codes and the applicable standards for towers that are published by the
8 Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the
9 City concludes that a tower fails to comply with such codes and standards, then upon notice being
10 provided to the owner of the tower, the owner shall have thirty (30) days to bring the tower into
11 compliance with such standards. If the owner fails to bring its tower into compliance within thirty
12 (30) days, the City may remove the tower at the owner's expense.

13 (b) Structural Design. Towers shall be constructed to the EIA Standards, which may be
14 amended from time to time, and all applicable construction/building codes. Further, any improve-
15 ments and/or additions to existing towers shall comply with the requirements of this chapter and
16 shall require submission of site plans sealed and verified by a professional engineer which
17 demonstrate compliance with the EIA Standards and all other good industry practices. The plans
18 shall be submitted and reviewed at the time building permits are requested.

19 (c) Required Parking. Parking shall be required as per Chapter 27.67 of the Zoning
20 Code.

21 (d) Tower Separation. An applicant will be required to demonstrate why it is necessary
22 from a technical standpoint to have a tower within one-half (1/2) mile of a tower whether it is owned
23 or utilized by applicant or another provider.

24 (e) Surety and Indemnity Requirements.

25 (1) Prior to issuance of a building permit, the applicant shall post a surety,
26 approved by the City Attorney, with the City in the minimum amount necessary, as determined by
27 the City, to guarantee the future removal of the facilities. The surety may not be revoked or
28 terminated during the ~~term~~life of the permit. The City may use the surety for any expenses it incurs
29 in removing any of the provider's facilities.

30 (2) A provider shall at its sole cost and expense, indemnify and hold harmless the
31 City, its officers, officials, boards, commissions, agents, representatives, and employees against any
32 and all claims, suits, losses, expenses, causes of actions, proceedings, and judgments for damage

1 arising out of, resulting from, or alleged to arise out of or resulting from the construction, operation,
2 repair, maintenance or removal of the provider's facilities. Indemnified expenses shall include, but
3 not be limited to, all out-of-pocket expenses, such as costs of suit and defense and reasonable
4 attorney fees, and shall also include the reasonable value of any services rendered by the City
5 Attorney's office and any employees of the City and any consultants retained by the City.

6 (f) Safety Inspection Requirements. The facility operator shall conduct safety inspections
7 in accordance with the EIA and FCC Standards and within 60 days of the inspection, file a report
8 with the Department of Building and Safety.

9 Section 8. That Section 27.68.130 of the Lincoln Municipal Code be amended to read
10 as follows:

11 **27.68.130 Non-use; Abandonment.**

12 ~~In addition to the definition of abandonment provided in Section 27.68.020, facilities shall~~
13 ~~be considered abandoned ninety (90) days after the expiration of an administrative permit or special~~
14 ~~permit and partially abandoned in the event that a portion of the antenna support structure is no~~
15 ~~longer used.~~

16 (a) Abandonment: No less than thirty (30) days prior to the date that a personal wireless
17 service provider plans to abandon, partially abandon or discontinue operation of a facility, the
18 provider must notify the City by certified U.S. mail of the proposed date of abandonment, partial
19 abandonment or discontinuation of operation. In the event that a provider fails to give notice, the
20 facility shall be considered abandoned upon the City's discovery of discontinuation of operation for
21 more than ~~90 and~~ 180 days, as the case may be, on all or part of such facility. Upon such
22 abandonment, the provider shall have sixty (60) days or such additional period of time determined
23 in the reasonable discretion of the City within which to:

24 (1) Reactivate the use of the facility or transfer the facility to another provider
25 who makes actual use of the facility; or

26 (2) Dismantle and remove facility. If the facility or portion thereof is not removed
27 within the sixty (60) days time period or additional period of time allowed by the City, the City may
28 remove such tower or portion thereof or antenna at the provider's expense. If there are two or more

1 providers co-locating on a facility, then this provision shall not become effective until all providers
2 cease using the facility or until a portion of the antenna support structure is no longer used.

3 At the earlier of sixty (60) days from the date of abandonment without reactivation or upon
4 completion of dismantling and removal, City approval for the facility or a portion thereof shall
5 automatically expire.

6 (b) If ownership of a facility is transferred from one provider to another, the previous
7 provider and the new provider shall be required to notify the City of the change of ownership or
8 transfer within thirty days of the change of ownership or transfer of the facility. The new provider
9 shall be required to make amendments to the application that is on file with the City, in order to
10 provide current information. The new provider shall also provide a surety in accordance with
11 Section 27.68.120.

12 Section 9. That Sections 27.68.020, 27.68.030, 27.68.120, and 27.68.130 of the
13 Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

14 Section 10. Pursuant to Article VII, Section 7 of the City Charter, this ordinance
15 shall be posted on the official bulletin board of the City, located on the wall across from the City
16 Clerk=s office at 555 S. 10th Street, in lieu of and in place of newspaper publication with notice of
17 passage and such posting to be given by publication one time in the official newspaper by the City
18 Clerk. This ordinance shall take effect and be in force from and after its passage and publication as
19 herein and in the City Charter provided.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2015:

Mayor