NOTE: THIS IS A DRAFT INTENDED FOR USE BY AN ATTORNEY. IT IS NOT LEGAL ADVICE. IN THIS CASE, ONE SHOULD RUN THE LETTER BY A LOCAL ATTORNEY TO MAKE IT MOST APPLICABLE TO THE LOCAL SITUATION. THE CONTRIBUTORS TO THIS DRAFT DISCLAIM LIABILITY: THE USE OF THE BELOW STATEMENTS, IN WHOLE OR PART, IS YOUR CHOICE.

11A-4-4 SPECIFIC LAND USE STANDARDS:

FFF. Wireless Communication Facilities: Personal wireless facilities, spires, poles, antennas, steeples, towers, and other such structures. Wireless communication facilities and towers shall comply with the following:

1. **Purpose.** The purpose of this chapter is to establish uniform and comprehensive policies and procedures for the placement, construction. modification and operation of secure, reliable, and safe wireless telecommunications infrastructure and wireline telecommunications/broadband infrastructure that respects local control, democracy, public safety, and environment.

   Given the many well-known problems with wireless broadband, including, but not limited to —

   - energy inefficiency
   - safety
   - reliability
   - security
   - privacy
   - surveillance
   - distraction of residents and visitors using wireless broadband services while traveling in public or driving on our streets

   . . . the City considers *Wireless Telecommunications Facilities (WTFs)* most appropriate for wireless telecommunications services (i..e. outdoor phone calls via wireless licensed and unlicensed frequencies). The City considers *Wireline Facilities* (fiber-optic, coaxial, copper and other wireline services) most appropriate for information services (i.e. Internet, audio/video streaming, gaming and other data-intensive applications). This City policy recognizes the nearly ubiquitous capability of wireless carriers to enable Wi-Fi calling from residents' home wireless routers, which is an unlicensed wireless service that can be powered on and off by each resident, as needed. This is preferable to any 24/7 wireless service that would be installed on private or public land within the city that cannot be powered on and off, as needed. In short, the City **does not consider** wireline broadband and wireless broadband to be functionally equivalent services with respect to 1996 Telecommunications

   Act's § 332(c)(7)(B)(i):

   Title 47 USC § 332(c)(7)(B)(i):

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof —

I. shall not unreasonably discriminate among providers of functionally equivalent services; and

II. shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

FTTP Broadband and Wireless Broadband Are NOT Functionally Equivalent Services

	Wireline Fiber-Optic Broadband	Wireless Broadband
Data Medium	Wireline glass fiber	Wireless through the air
Spectrum	Visible Light	Microwave
Frequencies	Terrahertz	Megahertz
Frequency Ranges	405,**000,000,000,000** Hz to 790,000,000,000,000 Hz	600,**000,000** Hz to 86,000,000,000 Hz
Frequency Ranges	405 × **1012** Hz to 790 × 1012 Hz	600 × **106** Hz to 86,000 × 106 Hz
Wireless Interference	None	Ubiquitous
Data capacity	Huge	Limited
Download speed	1,000 Mbsp down	25-100 Mbsp down
Upload speed	1,000 Mbsp up	5-10 Mbsp up
Latency	1-5 mill-seconds	10-50 ms
Energy-efficiency	Extremely efficient	Extremely inefficient
More Frequent Installation	Underground	On poles
Less Frequent Installation	On poles	Underground
Ease of date capture	Difficult	Easy
Security	Much more secure	Much less secure
National Security	More reliable	Much less reliable
Electromagnetic Pulse Attack	Survives	Does not survive
Fire: Natural or Attack	Survives Underground	Does not survive=

	Wireline Fiber-Optic Broadband	Wireless Broadband
Health Effects	None	Many Proven*
Biological Effects	None	Many Proven*
Environmental Effects	None	Many Proven*
Impacts in/from PROW	None	Significant**

* Link to tens of thousand of peer-reviewed studies — established science that proves Negative Health, Biological and Environmental Impacts of RF microwave radiation exposures

** Link to safety, privacy and property value harms from Wireless Telecommunications Facilities (WTFs) installed near homes

In service of the purpose stated in FFF(1), the City seeks to achieve the following objectives:

a. Protect and promote the public health, safety and welfare of City residents and visitors;

b. Promote public access to telecommunications which is safe, reliable, affordable, secure, respectful of privacy, consumer rights, and rights detailed in the Constitution of Idaho;

c. Ensure that the rights of residents and visitors with disabilities or pacemakers are duly protected under the laws, constitutions and rights of both the State of Idaho and United States of America;

d. To the maximum extent possible under state and federal laws, prevent abuse of surveillance capabilities via telecommunications and information services and, in particular, prevent use of facial recognition or other surveillance equipment or devices with artificial intelligence capacities;

e. Require bonds, indemnity, insurance, and/or any other financial protective measures sufficient to protect the City from potential claims for injuries, illnesses and deaths from pulsed, data-modulated, Radio-frequency Electromagnetic Microwave Radiation (RF-EMR) exposures as well as from liabilities for equipment removal or other costs caused by the placement, construction, modification or operation of wireless or wireline infrastructure .

f. Regulate structures and siting to prevent or reduce other adverse impacts, such as top-heavy utility poles with a likelihood of falling on pedestrians;

g. Preserve community character and protect aesthetic quality, preventing clutter and visual blight and fostering an aesthetically pleasing environment;

h. Minimize interference with pedestrian and vehicular traffic,

i. Avoid damage to or loss of street trees, protecting historic, cultural, and natural resources by preventing degradation of the surrounding settings or directly upon the resource;

j. Encourage siting of wireless infrastructure in preferred locations to minimize intrusion of these uses into residential, community, and protected environmental areas;

k. Minimize the total number of antennas throughout the community while still ensuring outdoor access to telecommunications service.

l. Protect land and residential uses from potential adverse impacts of wireless infrastructure and protect the City's public rights-of-ways and municipal infrastructure located within the City's public rights-of-way;

m. As long as the City is bound by state or federal laws requiring the following, this Chapter is not intended to, nor shall it be interpreted or applied to:

(1) prohibit or effectively prohibit any personal wireless telecommunications service provider's ability to provide personal wireless telecommunication**s** service;

(2) prohibit or effectively prohibit any entity's ability to provide telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management;

(3) unreasonably discriminate among providers of functionally equivalent service;

(4) regulate the placement, construction or modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions;

(5) prohibit any collocation or modification that the City may not deny under federal or state law;

(6) impose any unreasonable, discriminatory or anti-competitive fees or

(7) otherwise authorize the City to preempt any applicable federal or state law.

n. This Chapter is not intended to and will not limit or prejudice any individual's right to accommodation or protection under the Fair Housing Amendments of 1988 American Disabilities Act, or any similar state or federal law or human right.

o. No Waiver of Standing**.** This Chapter is not intended to and will not limit or prejudice the City's own rights to legal actions to protect the City and its residents. The City's grant or grant by operation of law of Wireless Telecommunications Facilities (WTFs) does not waive, and shall not be construed to waive, any standing of the City to challenge relevant federal or state law.

2. **Towers In Zoning Districts**:

a. Personal wireless facilities including towers supporting amateur radio antennas shall be prohibited in all residential land use districts. Personal wireless facilities shall be camouflaged or concealed, not readily identifiable as such, designed to be aesthetically compatible with existing and proposed uses on the site in all residential zones.

b. Wireless antennas in nonresidential and open space districts may be permitted to be attached to existing light standards and power line support devices (or replacement equivalent of same height) provided, however, the antenna(s) are either flush mounted or mounted in a manner that provide minimum visual impact. Notwithstanding the foregoing, all provisions of this subsection FFF shall be applicable to wireless antennas located on existing light standards and power line support devices.

3. **Collocation Requirements:**

a. A proposal for a tower mounted Wireless Telecommunications Facility (WTF) may not have an antenna installed any lower than thirty five feet (35') above the ground and the WTF coolication shall not be approved unless the city council finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within the following radii of the proposed tower:

(1) A two (2) mile radius for towers with a height over one hundred ten feet (110').

(2) A one mile radius for towers with a height over eighty feet (80') but not more than one hundred ten feet (110').

(3) A one-half (1/2) mile radius for towers with a height over fifty feet (50') but not more than eighty feet (80').

(4) A one-fourth (1/4) mile radius for towers with a height over thirty-five feet (35') but not more than fifty feet (50').

b. It shall be the burden of the applicant to demonstrate that the proposed tower or antenna cannot be accommodated on an approved tower or building within the required search radius due to one or more of the following reasons:

(1) Unwillingness of another tower or facility owner to entertain shared use.

(2) The proposed collocation of an existing tower or facility would be in violation of any local, state or federal law.

(3) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.

(4) ~~The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.~~

(5) ~~Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.~~

(6) ~~Other unforeseen reasons that make it unfeasible to locate the planned telecommunications equipment upon an existing or approved tower or building as~~

~~documented by a qualified and licensed professional engineer, or other professional qualified to provide necessary documentation.~~

c. Any proposed commercial wireless telecommunication service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two (2) additional users if the tower is over one hundred ten feet (110 feet) in height, for at least one additional user if the tower is over fifty feet (75 feet) in height.

d. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

e. Personal wireless facilities proposed at a location which has an approved conditional use permit (approved after the effective date hereof) for an existing facility which was required to allow collocation shall not be required to obtain a separate conditional use permit as long as all the requirements of the previously approved conditional use permit will be complied with. Design review, and subsequent building permit, will be required for any such proposal.

4. **Tower and Antenna Design Requirements:**

a. All personal wireless facilities shall be required to obtain design review approval prior to construction.

b. Personal wireless facility towers shall be of a monopole design unless the city council determines that an alternative design would better blend into the surrounding environment.

c. With the exception of necessary electric and telephone service and connection lines approved by the issuing authority, no part of any antenna or tower nor any lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of the right of way, public street, highway, sidewalk, or property line.

d. Every tower affixed to the ground shall be protected to discourage climbing of the tower by unauthorized persons. The climbing pegs within the bottom twenty feet (20') of the tower shall be removed and shall only be used when the tower is being serviced.

e. Metal towers shall be constructed of, or treated with, corrosive resistant material.

f. Wood poles shall be impregnated with rot resistant substances.

g. The Permittee shall design and install the smallest possible equipment that can serve the Telecommunications service area that will close a proven significant gap in telecommunications coverage, as established by a semi-annual citywide Need Test.

h. Wireless Need Test means is designed to measure the signal strength of all Wireless Carrier-specific frequencies. Industry-standard Drive Tests can measure actual signal strength for all antennas currently installed and operating in the City. The Drive Tests would log, second-by-second, the existing signal strengths in decibel-milliWatts (dBm) for each frequency transmitted from antennas that reach the City's streets. The raw data and

report would be entered into the public record every six months, so the results can be verified by any member of the public.

i. Importantly, the dates of the Drive Tests need to be kept secret from all Wireless Telecommunications carriers and their agents, so such parties would have no opportunity to power down antennas under their control during the Drive Tests — to prevent these parties from artificially creating a temporary significant gap in telecommunications service coverage in an attempt to game the results of the Drive Tests.

j. The results of the Drive Tests would provide verifiable, objective data to determine if a particular proposed WTF would be legally necessary to be installed in the public rights-of-way within the City's jurisdiction and legal authority. The raw data from the Drive test would be used to establish if any carrier-specific significant gaps in telecommunications service coverage actually exist, considering results from the voice-frequencies specific to each carrier. Any new WTF would only be licensed by the City if there is a proven significant gap in telecommunications service that could be corrected placing and constructing a wireless antenna using the "least intrusive means".

5. **Tower Setbacks**:

a. Towers shall meet the setbacks of the underlying land use district with the exception of mixed use and highway mixed use land use districts, where towers may encroach into the rear setback area, provided that the rear property line abuts another mixed use or highway mixed use property and the tower does not encroach upon any easements.

b. The base of the personal wireless facility shall be set back a minimum distance of two (2) times the height of the tower from the property line of any residential dwelling or 500 feet, whichever is greater.

c. If the tower does not exceed the height limitations of the land use district in which it is located, the tower shall meet the setback requirement of the land use district except as allowed in subsection FFF4a of this section. If the tower exceeds the height limit of the land use district in which it is located, the tower shall be set back one foot (1') for every ten feet (10') in total tower height. In either case, the tower shall be constructed to the telecommunications industry association/electronic industries association (TIA/EIA) 222 revision F standard entitled "Structural Standards For Steel Antenna Supporting Structures" or as hereinafter may be amended. Otherwise, the tower shall be located a minimum of one foot (1') for each foot of height from all property lines (the fall zone). No storage or structures other than the accessory utility buildings, are permitted in the fall zone, except as may be specifically permitted by the city council through a conditional use process.

d. Towers shall be set back from all existing public right of way lines (or planned right of way lines if additional is to be acquired in the future) by a minimum distance equal to twice the height of the tower including all antennas and attachments or 500 feet, whichever is greater.

e. Towers shall not be located between a principal structure and a public street.

f. ~~A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the city council, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure~~.

g. g. If this requirement conflicts with other setback requirements of this code the setback with the greater distance shall prevail, except as may be allowed in subsection FFF4f of this section.

6. Small Wireless Telecommunications Facilities within the Public Right-of-Way:

   a. Wireless Telecommunications Facilities shall not be sited within residential zoned neighborhoods, school zones, public parks & historic locations.

   b. Setbacks from Residential Zones - SWTFs shall be located a minimum distance of 1,000 feet from the closest residential property line.

   c. Setbacks from School Zones, Public Parks & Historic Places - SWTF's shall be located a minimum distance of 1,000 feet from the closest property line.

   d. Notwithstanding the foregoing, all provisions of this subsection FFF shall be applicable to small wireless antennas located on existing light standards and power line support devices.

7. **Tower Lighting, Signage, And Attachments:**

   a. No antenna or tower shall have affixed or attached to it in any way, except during time of repair or installation, any stationary lights, strobe lights, reflectors, flashers, or other illuminating device, except as specifically required by the federal aviation administration, federal communications commission, or other federal or state authority.

   b. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower if approved by the city.

   c. The use of any portion of a tower for signs, other than warning or equipment information signs, is prohibited.

   d. No tower shall have constructed thereon, or attached thereto, in any way, any platform, catwalk, crow's nest, or like structure, except during periods of construction or repair.

8. **Amateur Radio Antennas:**

   a. In accordance with the federal communications commission's preemptive ruling PRB 1, towers erected for the primary purpose of supporting amateur radio antennas may exceed thirty feet (30') in height provided that a determination is made by the city that the proposed tower height is technically necessary to successfully engage in amateur radio communications. A conditional use permit is required for any amateur radio antenna in excess of thirty five feet (35').

9. **Accessory Utility Buildings:**

a. All utility buildings and structures accessory to a tower are required to have design review approved by the city prior to construction.

10. **Abandoned Or Unused Towers Or Portions Of Towers:**

a. As a condition of approval of any required conditional use permit for personal wireless facilities, all abandoned or unused towers and associated facilities shall be required to be removed within sixty (60) days of cessation of use as a personal wireless facility unless a time extension is granted by the city. A copy of the relevant portions of a signed lease, which requires the applicant to remove the tower and associated facilities upon cessation of the use as a personal wireless facility, shall be submitted at the time of application. In the event that the tower and associated facilities are not removed within the sixty (60) days, the tower and associated facilities may be removed by the city and the costs of removal assessed against the property.

11. **Additional Application Submittal Requirements:**

a. In addition to the information required elsewhere in this title, development applications for personal wireless facilities, shall include the following supplemental information: [

(1) Documentation from a qualified and licensed professional engineer showing that the proposed facility will be in compliance with the FCC standards regarding radio frequency (RF) emissions as they relate to the general public, including aggregate emissions for all RF-EMR emitting equipment operating in the City of Eagle..

(A) **RF Changes Compliance Schedule.** If such FCC guidelines are altered to become more protective, all existing facilities or antennas shall be brought into compliance. If the alteration was foreseen and if reasonable, then applicants shall be required to bring facilities into immediate compliance. If rapid compliance is not feasible, the City may halt or require the halt of transmissions until installations are brought into compliance. Otherwise, the City may choose to set a schedule for compliance with changes in these guidelines. The City reserves the right to revoke permits for facilities and antennas which fail to be in compliance.

(B) **RF-EMR Report**. The applicant shall submit with application and keep current an RF-EMR exposure report that certifies that the proposed wireless facility, both individually and cumulatively with all other emitters that contribute more than 5% to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by a neutral third-party RF engineer acceptable to the City. The RF report must include the actual frequency bands and the maximum power levels (in watts of effective radiated power) that the existing and proposed antennas at the site are capable of outputting irrespective of any radio currently selected. The report must show the location and orientation of all transmitting antennas and the boundaries of areas with RF-EMR exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF-EMR exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch. All RF compliance reports and the selection of circumference of the vicinity subject to testing shall be reviewed and confirmed by an independent consultant retained by the City.

(2) The applicant shall provide the full insurance policy proving it provides comprehensive general liability insurance in the amount of no less than one million dollars ($1,000,000.00) per occurrence with an aggregate of ten million dollars ($10,000,000.00) and a company authorized to do business in the State of Idaho shall write the policy. The policy **shall not contain any exclusions of coverage for Hazardous Pollution activities and no exclusion for injuries, illnesses or deaths from RF-EMR exposures.** The insurance policy shall require at least thirty (30) days' notice to the City prior to termination of coverage for any reason. The applicant shall secure substitute liability insurance coverage prior to actual termination; failure to maintain comprehensive general liability insurance shall result in immediate withdrawal of the permit by the City. At time of application, the applicant shall provide written indemnification for the City. The applicant shall provides Proof of Insurance with the City as a named Insured. The applicant **shall provide proof of Pollution Liability Coverage for RF-EMR exposures**. The applicant shall provide a list of its board of directors and its audited financials for purposes of indemnification.

(3) **NEPA Review: The applicant must** provide substantial written evidence proving that the wireless facility has completed NEPA review and is in full-compliance with FCC regulations regarding NEPA.. If exemption is claimed, the applicant must state the basis for such exemption and must provide substantial written evidence, including all supporting documents, that the facility qualifies for the exemption;

(4) **Americans with Disabilities Act Compliance**. All facilities shall be built in compliance with the Americans with Disabilities Act (ADA). No wireless telecommunications facility or antenna shall be approved which would:

(A) render any portion of the rights of way noncompliant with the ADA.

(B) hinder equal access and enjoyment of public and private property to residence with Electric Magnetic Sensitivity (EMS) disabilities or pacemakers.

(5) **Expert Review**. Due to the technical nature of wireless facilities applications, the City shall retain an independent consultant, at the applicant's expense, who is an expert in the field to evaluate the wireless facility applications.

(6) **Application Deposits and Fees**. The minimum application fee and deposits shall serve to initiate the process of reviewing, evaluating, conducting a public hearing, and other activities involved in consideration of the application, as well as conducting oversight of the construction of the wireless telecommunications facility or antenna to ensure compliance with zoning requirements. The applicant shall submit all applicable fees, including deposits, with the application. The application fee shall be nonrefundable. Deposits shall be used to cover specific costs, and any unused remainder shall be returned to the applicant. When necessary, the applicant shall be informed and required advance a deposit for known costs, or to reimburse unexpected

costs. At minimum, fees and procedures required with submission of application include:

(A) **Application Fee**. The City shall assess a minimum per-installation fee of $500 for a new wireless telecommunication facility; $300 for a new antenna and recurring fees, including ROW access fee, and $1,000 for non-recurring fees for a new pole. Application fees are nonrefundable and must be paid again if the application received is incomplete.

(B) Independent Expert or Consultant Deposit. A deposit of $4000 shall be provided by the applicant so that consultants, including consulting experts, are paid pursuant to an adopted fee schedule resolution.

(C) Fees shall be raised annually in accord with inflation and rounded to the nearest dollar. The City may, through a resolution of City Council, set higher fees and deposits.

(7) **Indemnification**. Permittee shall provide an executed agreement in the form provided by the City, pursuant to which Permittee and any related third parties agree to defend, hold harmless and fully indemnify the City of Eagle, its officers, employees, agents, attorneys, and volunteers, from

(A) any claim, action or proceeding brought against the City of Eagle or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the City or

(B) a successful legal action brought against the City for loss of property value or other harm caused by the placement or operation of a wireless communication facility installation.

(C) Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding whether incurred by the Permittee, the City of Eagle and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the Permittee to indemnify the City of Eagle for all of the Town's costs, fees and damages which the City incurs in enforcing the indemnification provisions of this Section.

(8) **Annual Recertification.** On July 1, all Telecommunications Providers shall submit an affidavit to the City which shall list, by location, all communications facilities it owns within the City, and shall certify

(A) each such installation remains in use;

(B) evidence of insurance as required in section 12-a-2 of this chapter, in the form of a certificate of insurance.

(C) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal regulations.

(D) provide the Public Works Director the utility's name, address and regular business telephone numbers, the name of one or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities and a 24 hour telephone number for each such person

(E) each such installation which is no longer in use. Any [tele]communications facility that is no longer in use shall be removed by the Telecommunications Provider within thirty (30) calendar days of delivery of the affidavit.

(F) Any small cell wireless installation which is not removed within 30 days after being listed as no longer in use in the annual recertification affidavit shall be subject to a fine of $100/day until such installation is removed.

(G) Where such annual recertification has not been properly or timely submitted, or equipment no longer in use has not been removed within the required 30-day period, no further applications will be accepted by the City until such time as the annual re-certification has been submitted and all fees and fines paid.

(9) **Emergency Action**. The City retains the right and privilege to remove or move any wireless telecommunication facility or antenna, as well as pole, support structures, and other accessories which, as the City may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances justify and permit, the City shall notify the applicant and give the applicant an opportunity to move or remove its own facilities. If circumstances do not permit, the City may notify the applicant as promptly and as reasonably possible afterwards.

(10) A report from a qualified and licensed professional engineer which describes the tower height and design (including a cross section and elevation); documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas; describes the tower's capacity, including the number and type of antennas that it can accommodate; with complete manufacturer name, model numbers and specification sheets; documents what steps the applicant will take to avoid interference with established public safety telecommunications; GPS coordinates; includes an engineer's stamp and registration number; and includes other information necessary to evaluate the request.

(11) For all personal wireless facilities, a letter of intent committing the tower owner and his or her successors to allow the shared use of the tower, as required by this code, if an additional user agrees in writing to meet reasonable terms and conditions for shared use.

(12) Documentation showing that the proposed tower complies with regulations administered by federal aviation administration.

(13) Written approval of the site location with specific reference to the height of the antenna structure and any lighting issues, from the federal aviation administration, the chief of the Idaho bureau of aeronautics, and the Boise airport commission and an aviation easement approved by the Boise airport commission.

(14) Data files and charts showing outdoor frequency-specific RF-EMR signal strength measurements for all frequencies that the proposed antenna can output. Propagation charts showing existing and proposed signal strength (ranging from 0 dBm to -120 dBm) at the target site and within an area large enough to provide an understanding of why the facility needs to be in the chosen location.

(15) A written analysis demonstrating that the proposed site is the most appropriate site within the immediate area. For the purposes of this subsection, the analysis shall include all properties within the search radii stated above. The analysis shall include, but is not limited to, the following:

(A) Description of the surrounding area, including topography;

(B) Natural and manmade impediments that would obstruct adequate cellular telephone transmissions;

(C) Physical site constraints that would preclude construction of a cellular telephone facility on any other site;

(D) Technical limitations of the system that limit siting options.

12. **Permits:**

a. It shall be unlawful for any person to erect, construct, re-erect, or replace, any tower without first making application to the city and securing a building/zoning permit.

b. A building/zoning permit shall not be required for antennas and/or towers erected temporarily for test purposes, for emergency communication, or for broadcast remote pick up operations. Temporary antennas shall be permitted for a maximum of seventy two (72) hours unless specifically approved by the city council.

c. In addition to the findings required and conditions permitted for conditional use permits, as stated within section 11A-8-4 of this title, the city council shall make an additional finding concerning the duration of the conditional use permit. Upon finding that the conditional use permit is to be limited in duration, a condition limiting the duration and the basis for such a condition shall be included within the findings of fact and conclusions of law for the conditional use permit.

13. **Additional Requirements For Notice Of Public Hearing:**

a. All personal wireless facilities require a conditional use permit and shall comply with the conditional use notice requirements within this code. Tower mounted personal wireless facilities shall comply with the following additional requirements:

a. All property owners within one thousand feet (1,000') of all property lines of the site (or lease boundary lines, if applicable) shall be notified of the public hearing by the city, by mail, a minimum of Sixty (60) days before the scheduled public hearing. The applicant will be required to provide the names of the property owners to the city.

b. (2) Any required public notice signs, to be located on a proposed site, shall be required to comply with the requirements for posting of a rezone/subdivision (minimum size of sign face to be 4 feet wide by 4 feet high).

14. **Restricted Areas:**

a. a. Telecommunications towers in excess of thirty five feet (35') in height shall not be permitted within the Willow Creek Road corridor. (Ord. 710, 1-14-2014)

b. b. Personal wireless facilities in excess of thirty five feet (35') in height and not contained within a building shall not be permitted within the "restricted area for telecommunications towers" as shown on exhibit A located at the end of this section. However, notwithstanding the foregoing, personal wireless facilities may be allowed within the restricted area provided they are camouflaged or concealed, not readily identifiable as such, and designed to be aesthetically compatible with existing and proposed uses within the restricted area.

11A-1-5 DEFINITIONS

Title 47 U.S. Code § 153 (24) Information service — The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Title 47 U.S. Code § 153 (50) Telecommunications — The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Title 47 U.S. Code § 153 (53) Telecommunications service — The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Essential Telecommunications. Facilities operated and maintained by public agencies that support Public Safety Communications Systems, which provide wireless communications to law enforcement, fire services, emergency medical services, and other public safety/service agencies. These facilities are considered Essential Services. needed**?**

Antenna. Any exterior transmitting or receiving device mounted on a wireless facility that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies, wireless telecommunications or other electromagnetic signals. This definition includes repeaters as defined herein. Antennas shall include, but not be limited to, devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted up and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be part of the antenna.

Collocation. Placement or installation of wireless telecommunications equipment, including antennas and related equipment, on an eligible and existing support structure or non-tower supporting structure that already has an operating antenna attached to it.

**Transmission equipment. **Transmission equipment means any equipment that facilitates transmission for wireless service, including, but not limited to, radio transceivers, antennas and other equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supplies.

Equipment Building, Shelter or Cabinet. A cabinet or building used to house equipment used by telecommunication providers at a facility. "

Facility" or "Facilities" or ~~"Wireless Facility" or "Wireless Facilities~~" – In the context of wireless, means any cable or other wire or line, antenna, radio, pipeline, pipes, duct, conduit, converter, cabinet, pedestal, meter, tunnel, vault, equipment, drain, manhole, splice box, surface location marker, pole, structure, utility, or other appurtenance, structure, property, or tangible thing owned, leased, operated, or licensed by a Company to provide or aid in the provision of cable, personal wireless, information service, or telecommunications services.

Material modification. A material modification shall be defined as the replacement of a telecommunications facility, any addition of equipment to a facility, an increase in the number of antennas, a visible change in appearance, and any increase in the telecommunications facility height or any expansion of the enclosed area in which the equipment buildings, cabinets, and all items need for the facility are located. This definition is included as separate from but inclusive of a substantial modification, being a reasonable person's interpretation of a "substantial modification."

Personal wireless service facility. Personal wireless service facility means the same as defined in 47 U.S.C. § 332(c) (7) (C) (i), as may be amended. Personal wireless service facilities include the structure, transmission equipment, accessory equipment and related improvements used, or designed to be used, to provide wireless transmission of voice including but not limited to cellular phone service~~,~~

Public right-of-way (PROW). PROW means any street, public way or right-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by the City for which construction and operation of a Personal Wireless Service Facility is within the authorized scope of the City's easement, and any privately owned area within the City's jurisdiction which is not yet, but is designated as, a proposed public place on a tentative subdivision map approved by the City. Wireless, structure. With respect to wireless, a structure is a pole, tower, base station, mast, or other building, whether or not installed or in use at a facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services) or other such facilities as defined in 47 C.F.R. § 1.6002(m).

Significant gap in telecommunications coverage. As applied to the coverage of an applicant's personal wireless telecommunications service, a significant gap in telecommunications coverage is the ability to make or receive an outdoor call most of the time. Provided that neither the Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:

(A) A significant gap may be demonstrated by In-Kind call testing, which may be augmented by in frequency-specific signal strength measurements in decibel-milliwatts (dBm).

(B) The authority shall accept evidence of Drive Tests and/or Call Tests conducted by a neutral third-party RF Engineer hired and supervised by the City, but paid for by the applicant. Call Tests shall consider the following:

(i) the number of calls conducted in the call test,

(ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and

(iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.

Small Wireless Facilities (SWFs). A small wireless facility means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded. For clarity, the definition summarizes the conditions provided by the FCC:

(1) The facilities:

(A) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or

(B) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(C) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume; **[Note: this could be defined much smaller in your city]**

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; **[Note: this could be defined much smaller in your city]**

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

Support structure. In the context of wireless, a freestanding structure that is used for the purpose of supporting an antenna or antenna array and that may consist of a monopole, a mast, a self-supporting lattice tower, a guy-wire support tower, utility pole, or other similar structures. "Non-tower supporting structure" or "Non-tower facility" This means any structure, whether or not built for wireless communications purposes, that supports wireless transmission equipment under a valid permit and which is not a tower.

TOWER: Any ground or roof mounted pole, spire, similar structure, or combination thereof, with a "height", as defined in this chapter, in excess of fifteen feet (15'), including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade.

Tower. In the context of wireless, a tall structure, **over 50 feet in height,** that supports antennas or antenna wires for wireless transmissions.

Wireless. Wireless means the transmission of an electromagnetic **radiation power through the air without the use of a wire, using any frequencies from **0 MHz to 300,000 MHz**.

"Monitoring of wireless facility" or "Monitoring of facility" – In the context of wireless, the measurement and logging of peak and average RF-EMR exposure data at least once every 1/10th of a second for a full 30-minutes, by the use of professional RF-EMR meters with current certificates of calibration. The raw data from the 30-minute data log is to be entered into the

public record so any third party can view, analyze and verify the data collected — from which one could calculate the total, cumulative RF-EMR exposures from the site. The data logs would be comprised of RF-EMR exposure values from all individual facilities, towers, antennas, repeaters transmitting to the measurement site. Frequencies metered may range from 300 MHz to 300 GHz, shall include all wireless frequencies emitted or suspected, Wireless, "facility height" or "antenna height" – When referring to a wireless facility or antenna, the distance measured from the finished grade of the parcel to the highest point on the wireless telecommunications facility, including the base pad and any antenna or other structure.

~~WIRELESS COMMUNICATION FACILITY: Any unstaffed facility that transmits and/or receives signals by electromagnetic or optical means, including, without limitation, antennas, microwave dishes, satellite dishes or similar structures supporting such equipment.~~

Wireless Telecommunications Facility (WTF): Any facility for that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar telecommunication purposes, including for transmitting and/or receiving electromagnetic waves for telecommunications, including, but not limited to, self-supporting lattice towers, guyed towers, or monopole towers. The term includes, cellular telephone towers, repeaters, and alternative tower structures. This term includes equipment, equipment buildings, parking area, other accessory equipment, fiber, the structure and any support thereto. This definition includes all personal wireless facilities, including Macro WTFs, CP-WTFs and DAS systems owned or operated by a wireless provider or carrier and which are part of a commercial wireless system, or are able to be used by the general public,

Close Proximity Wireless Telecommunications Facility (CP-WTF) A CP-WTF is a facility that by design is capable of close proximity to the general public, or closer than traditionally allowed in past decades. A CP-WTF includes all antennas or facilities attached to buildings. A CP-WTF includes the definition of a small wireless facility by the FCC as described in 47 C.F.R. Section 1.6002, as may be amended. A CP-WTF includes any Micro Wireless Facility, meaning a wireless telecommunications facility where it is not larger in dimension than 36" in length, 18" in width and 12" in height, does not have an exterior antenna which is longer than 11 1/2", and is installed directly onto existing overhead cables owned by providers.

MPE. Maximum permissible exposure **t**o RF-EMR.

Personal wireless services. The term means the same as defined in 47 U.S.C. § 332(c) (7) (C) (i), as may be amended. Personal wireless services include commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. Unlicensed service is intended to mean use of duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.

Radiation. In the context of wireless, radiation refers to electric and magnetic fields emitted from frequencies ranging from 0 hertz through **300,000 MHz.**

Radio Frequency (RF) Engineer. An engineer specializing in electric or microwave engineering, especially the study of radio frequencies, who is a professional engineer registered to practice in the state of Idaho.

RF-EMR: pulsed, data-modulated, Radio-frequency Electromagnetic Microwave Radiation (RF-EMR) from 300 MHz to 300,000 MHz. ~~Radio Frequency (RF) Engineer. An engineer specializing in electric or microwave engineering, especially the study of radio frequencies, who is a professional engineer registered to practice in the state of Idaho.~~

H•P: Horizontal setback and maximum Effective Radiated Power (in Watts ERP) specifications ~~and data~~ that identify the horizontal distance from the highest occupied floor of the closest building to the location of the WTF antenna, as well as, the maximum Watts ERP output from all frequencies from all WTF antennas, calculated as the sum of the product of each antenna channel's maximum input power in Watts × the antenna Gain (dBi) for that respective channel.

Environmental Assessment (EA): NEPA requires the FCC to protect public and environmental health through review that includes a public commenting process, but the FCC has delegated some of its responsibilities to applicants and to the City. As stated in 47 CFR § 1.1307, an environmental assessment must be prepared by applicants for actions that may have a significant environmental effect. Details required by the FCC include, but are not limited to, critical analysis of effects on endangered species or critical habitat; impacts on wetland resources, effects on potential or actual sites listed on the National Register of Historic Places; impacts on Native American sites; and any alternative sites that might be reasonably considered. An EA or an exemption for an EA may be contested and sent to the FCC by the City or applicant for further review based on the FCC's NEPA responsibilities. A resident may also contest the EA or EA exemption, although this will not halt the process. If contested, public concerns and comments are to be included in the FCC review. If alleging a significant impact in regard to an existing facility or proposed modification, whether an EA was filed can be checked online via the FCC's Antenna Structure Registration (ASR) application on environmental notice, at https://wireless2.fcc.gov/ASRManager/service/national Notice Report.faces. If there is a current application, a request for further environmental review can be selected by clicking "ASR Environmental Notice" at this link: https://wireless2.fcc.gov/UlsEntry/pleadings/pleadingsT ype.jsp. If an application is not available online, then an email to towercomments@fcc.gov can provide information on the facility, contact information, and EA concerns.

National Environmental Policy Act (NEPA): NEPA is a federal law passed in 1970 that requires a review process and informed decision-making to identify environmental and public health impacts before a decision is made and construction begins. NEPA requires disclosure to the public, intake of public comments, study of consequences, and proposed measures improve environmental and public health. NEPA has three levels of review: Categorical Exclusions (CatExs), Environmental Assessments, and Environmental Impact Statements, the latter completed by federal agencies. Applicants for wireless facilities may be required to complete an environmental assessment.