

## SUMMARY OF ORDINANCES

### ZONING ORDINANCE (ORDINANCE NO. 15,816) PLANNING AND DESIGN ORDINANCE (ORDINANCE NO. 15,817) AND CROSS-REFERENCE AMENDMENTS (ORDINANCE NO. 15,819)

This notice summarizes the following ordinances adopted on October 16, 2019, by the Ordinance Numbers stated below, which ordinances amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended: (1) a new Chapter 134 of the Des Moines Municipal Code, Zoning Ordinance, which repeals and replaces existing Chapter 134 of the Des Moines Municipal Code and Article 4 of which repeals and replaces the City's Wireless Telecommunications Facility Policy adopted on April 8, 2019 by Roll Call No. 19-0580; (2) a new Chapter 135 of the Municipal Code, proposed Planning and Design Ordinance, which repeals and replaces portions of existing Chapter 82 of the Des Moines Municipal Code and the City's Site Plan Ordinance and Site Plan/Landscape Policies adopted March 22, 2004; and (3) an ordinance making necessary revisions to Sections 2-923, 10-5, 10-43, 14-180, 14-183, 18-56, 18-137, 26-302, 26-303, 26-802, 26-805, 30-291, 30-293, 30-334, 42-56, 42-86, 42-254, 42-258, 42-553, 42-555, 50-35, 78-10, 78-61, 78-67, 78-74, 82-1, 82-3, 82-41, 82-77, 82-206 through 82-219, 98-75, 98-76, 98-116, 102-191, 102-359, 102-379, 102-608, 102-1010, 114-361.02, and 114-632 of the Des Moines Municipal Code relating to the adoption of said proposed Zoning Ordinance and Planning and Design Ordinance. The complete text of said adopted ordinances and Zoning Map are on file and available for viewing by the public between the hours of 8:00 a.m. and 5:00 p.m. in the office of the City Clerk, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, or on the City of Des Moines' website at [www.dsm.city](http://www.dsm.city). The ordinances shall be in full force and effect December 15, 2019.

#### Zoning Ordinance – Ordinance No. 15,816:

Chapter 134, Article 1 – Introductory Provisions. This article sets forth basic information regarding the effective date, compliance, and interpretation of the Zoning Ordinance, and establishment and interpretation of the zoning map.

Chapter 134, Article 2 – Districts. This article establishes zoning districts for the City of Des Moines, including:

- Downtown (DX) districts covering the Des Moines downtown area ranging from residential neighborhoods to high intensity areas;
- Mixed-Use (X) districts intended to enhance existing and create new compact nodes and corridors throughout Des Moines including those accessible by walking or automobile, regional-scale nodes and higher intensity commercial uses, transitional areas providing for residential and office buildings, outdoor sales and storage, and mid-scale employment uses such as office, low intensity industrial, and warehouse spaces;
- Industrial (I) districts associated with general and higher intensity manufacturing, warehousing, and other industrial uses, and transportation terminals;
- Public, Civic and Institutional (P) districts, providing locations for public, private, quasi-public, and institutional facilities, including parks and recreation areas, religious assembly places, cultural or arts centers, community centers, schools, infrastructure, recreational facilities, rail corridors, and utility corridors;

- Neighborhood (N) and Neighborhood Mix (NX) districts, including single-household and two-household residential areas with various building types, mobile home parks, and districts with a mix of single- and multiple-household uses and building types including infill housing, commercial home occupations and housing along corridors;
- Agriculture (A) and Flood (F) districts addressing low density uses in agricultural areas and flood plain and floodways, respectively; and
- PUD Legacy districts, which represent Planned Unit Development (PUD) zoning districts in existence prior to the effective date of the proposed Zoning Ordinance.

Chapter 134, Article 3 – Uses. This article and its Principal Use Table present the principal and accessory uses of property to be permitted in the City of Des Moines, subject to zoning district, and provide any supplemental regulations required to establish such uses.

Chapter 134, Article 4 – Wireless Telecommunications Facilities. This article repeals and replaces the City’s Wireless Telecommunications Facility Policy adopted on April 8, 2019 by Roll Call No. 19-0580, providing zoning and design requirements as well as review and approval procedures for small wireless facilities and utility poles, other wireless telecommunications facilities, and new towers, in accordance with State and federal law.

Chapter 134, Article 5 – Signs. This article contains findings, prohibitions, and regulations pertaining to signage throughout the City of Des Moines and by specific zoning district, including electronic and multi-vision display signs and general advertising signs.

Chapter 134, Article 6 – Review and Approval Procedures. This article sets forth the types and processes for Zoning Ordinance text amendments, zoning map amendments, and other relief from the Zoning Ordinance including administrative and Zoning Board of Adjustment review and approval procedures and appeals.

Chapter 134, Article 7 – Nonconformities. This article describes rights of and regulations on legal non-conforming uses of property and signs in the City of Des Moines, which uses were established prior to adoption of the Zoning Ordinance.

Chapter 134, Article 8 – Administration and Enforcement. This article describes the roles and authority of decision-making bodies and enforcement officers in relation to the Zoning Ordinance.

Chapter 134, Article 9 – Definitions. This article sets forth definitions of certain terms used in the Zoning Ordinance.

Planning and Design Ordinance – Ordinance No. 15,817:

Chapter 135, Article 1 – Introductory Provisions. This article includes basic information regarding the effective date, compliance, and interpretation of the Planning and Design Ordinance.

Chapter 135, Article 2 – Building Types. This article and its Building Types Table present the types of principal and accessory structures to be permitted in the City of Des Moines, subject to zoning district, and provide any supplemental regulations required to construct and develop lots containing such structures.

Chapter 135, Article 3 – Measuring Building Type Regulations. This article sets forth methods of measurement for the regulations contained in the Planning and Design Ordinance.

Chapter 135, Article 4 – Design Requirements. This article establishes the design requirements for buildings allowed as principal and accessory structures in the City of Des Moines, such as façade and roof materials and elements, downtown high-rise requirements, and mechanical equipment and appurtenances.

Chapter 135, Article 5 – Large-Scale Development. This article provides additional processes and requirements for regulation of developments on a single parcel or combination of parcels within a

total of 5 or more contiguous acres, or as necessary to meet the intent of the article, such as street and block development, zoning districts, and open space.

Chapter 135, Article 6 – Parking. This article explains the requirements for motor vehicle and bicycle parking in the City of Des Moines, such as calculation of required parking, parking layout and design, and site access and driveways.

Chapter 135, Article 7 – Landscape and Streetscape. This article, in part, repeals and replaces the City of Des Moines Site Plan/Landscape Policies adopted March 22, 2004, and includes general landscape installation and maintenance requirements, site and street tree and streetscape regulations, and buffer, fence, and appurtenance screening standards.

Chapter 135, Article 8 – Site Design Requirements. This article, in part, repeals and replaces the City of Des Moines Site Plan/Landscape Policies adopted March 22, 2004, and provides site planning, engineering, fire safety, and traffic and circulations standards supplementing the remainder of the Planning and Design Ordinance.

Chapter 135, Article 9 – Review and Approval Procedures. This article sets forth the types and processes for site plan review and approval, and for relief from the Planning and Design Ordinance including administrative, Plan and Zoning Commission, and City Council procedures and appeals.

Chapter 135, Article 10 – Pre-Existing Situations. This article describes rights of and regulations on legal pre-existing structures in the City of Des Moines, which structures were constructed prior to adoption of the Planning and Design Ordinance.

Chapter 135, Article 11 - Administration and Enforcement. This article describes the roles and authority of decision-making bodies and enforcement officers in relation to the Planning and Design Ordinance.

Chapter 135, Article 12 – Definitions. This article sets forth definitions of certain terms used in the Planning and Design Ordinance.

Cross-Reference Amendments Ordinance – Ordinance No. 15,819:

Necessary renumbering, redesignating and correcting of internal references and other clarifying revisions related to the adoption of the proposed Zoning Ordinance and Planning and Design Ordinance contained in the following sections of the Des Moines Municipal Code:

Section 2-923(1), “Duties of community development director” – Added reference to planning and design requirements.

Section 10-5(2), (3), (6), “Conduct of outdoor service” (outdoor service license) – Replaced references to C-3 zoning district with DX1, DX2 or DXR districts; deleted reference to chapter 134 and replaced with chapter 135.

Section 10-43(6), (7), “Conditions for approval” (liquor control license or wine or beer permit) – Replaced references to C-3, C-3A, C-3B, C-3R, and D-R zoning districts with DX1, DX2 and DXR districts; clarified separation measurement from public park and licensed child care center.

Section 14-180, “Definitions” (entertainment venue) – Added reference to planning and design requirements.

Section 14-183(a), “License application” (entertainment/amusement venue license) – Added reference to chapter 135.

Section 18-56(c), “Confinement of high risk dogs” – Added reference to planning and design requirements.

Section 18-137, “Enclosures” (animal enclosures) – Replaced reference to section 134-3 with section 134-9.7.

Section 26-302(a)(1), “Building permit exemptions” – Added reference to planning and design requirements.

Section 26-303(e)(2)(f), “Demolition of buildings and structures” – Added reference to planning and design requirements and chapter 135.

Section 26-802(b)(1), “Sign and billboards permits required” – Deleted reference to chapter 134.

Section 26-805(k), “Construction” (signs and sign structures, name of sign erector) – Replaced reference to “off-premises sign” with “general advertising sign” and clarified effective date as January 1, 1966.

Section 30-291, “Definitions” (negative zoning enforcement officer report) – Replaced reference to chapter 82 with chapter 135.

Section 30-293(5), “License criteria” (pawnbroker) – Replaced reference to chapter 82 with chapter 135.

Section 30-334(b), “Screening requirements for used merchandise collection centers” – Added reference to planning and design requirements.

Section 42-56, “Site plans and subdivisions” – Replaced reference to site plan approval procedures in section 82-207 with article 9 of chapter 135.

Section 42-86, “Permits required” – Replaced reference to site plan approval procedures in article V of chapter 82 with article 9 of chapter 135.

Section 42-254, “Maximum permissible sound levels by receiving land use; immediate threat”, Table 1, “Sound Levels by Receiving Land Use” – Replaced references to existing zoning districts in “Zoning Category of Receiving Land Use” column with new zoning districts.

Section 42-258(e), “Sound equipment, sound amplifying equipment and construction equipment” – Replaced references to C-3, C-3A, C-3B, C-3R, and D-R zoning districts with DX1, DX2 or DXR districts; added reference to legacy planned unit development zoning district and deleted reference to PBP district.

Section 42-553(a), “Scope” (tree removal and mitigation) – Replaced reference to site plan requirements of article V of chapter 82 with article 9 of chapter 135.

Section 42-555(f), “Tree protection and mitigation standards” – Replaced reference to “adopted site plan policies” with reference to chapter 135.

Section 50-35(a), “Certificate of compliance” (floodplains) – Added alternate design documentation references; replaced reference to section 82-207 with article 9 of chapter 135; replaced reference to occupancy permit approval pursuant to division 5 of article II of chapter 134 with issuance of certificate of zoning compliance pursuant to section 134-1.7; added legacy PUD approval.

Section 78-10(1), (5), “Limitation on retail premises” – Replaced reference to certificate of occupancy pursuant to section 134-15 with certificate of zoning compliance pursuant to section 134-1.7; replaced references to chapter 134 and 82 with chapters 134 and 135; replaced references to special permits with conditional use.

Section 78-61, “Definitions” (transient merchant) – Replaced references to special permits with conditional use; replaced reference to division 3 of article IV of chapter 134 with article 6 of chapter 134.

Section 78-67(4), (5), “Application for a transient merchant premises permit” – Added reference to chapter 135 regarding setbacks for structures; replaced references to C-3, C-3A, C-3B, C-3R and D-R zoning districts with DX1, DX2 and DXR zoning districts.

Section 78-74(b), (e), (m), “Restrictions on operations of transient merchants and transient merchant premises” – Replaced references to chapter 134 with chapter 135; replaced reference to C-3, C-3A, C-3B, C-3R and D-R zoning districts with DX1, DX2 and DXR zoning districts.

Section 82-1, “Plan and zoning commission fees” – Replaced reference to section 134-4 with reference to chapter 134.

Section 82-3, “Community development department fees” – Deleted reference to division 5 of article II of chapter 134.

Section 82-41, “Quarterly reports” (plan and zoning commission) – Added legacy planned unit developments to reporting requirements.

Section 82-77, “Hearings” (comprehensive plan) – Revised references to public hearing requirements.

Section 82-206 through 82-219, “Site Plan Review” – Deleted sections replaced by the Planning and Design Ordinance.

Section 98-75(a), “License required for private landfill site for construction or demolition materials” – Replaced reference to special use permit with conditional use approval.

Section 98-76(b), “Transfer station license” – Replaced reference to special use permit with conditional use approval.

Section 98-116(c), “Recycling at multifamily residential premises” – Added reference to planning and design requirements; replaced reference to variance under chapter 134 with design alternative under chapter 135.

Section 102-191, “Conform to specifications” (public streets and alleys) – Added reference to community development director approval and chapter 135.

Section 102-359(6), “Application to construct” (driveway approach) – Replaced reference to article V of chapter 82 with article 9 of chapter 135.

Section 102-379(b), “Alleys” – Replaced reference to section 134-1377 to article 6 of chapter 135.

Section 102-608, “Special restrictions for newsracks and trash containers” – Replaced references to C-3 zoning district with DX1, DX2 and DXR zoning districts.

Section 102-1010(b), “Denial of house moving permit” – Added reference to planning and design requirements.

Section 114-361.02(b), (c), “Illegal off-street parking” – Replaced reference to parking provisions in section 134-1377(m) with section 135-6.6; deleted subsection (c).

Section 114-632, “Residential districts” – Replaced references to R-1 through R-4 zoning districts with N-1 to N-5 and NX1 to NX3 zoning districts.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

CITY OF DES MOINES, IOWA

By: T.M. Franklin Cownie, Mayor

ATTEST: P. Kay Cmelik, City Clerk

I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a summary of Ordinance Nos. 15,816, 15,817, and 15,819, passed by the City Council

of said City on October 16, 2019, signed by the Mayor on October 16, 2019, and published as provided by law in the Business Record in Polk County on November 22, 2019, Authorized by Publication Order No. 10949, and in the Indianola Record Herald in Warren County on November 20, 2019, Authorized by Publication Order No. 10950.

P. Kay Cmelik, City Clerk

ARTICLE 4, WIRELESS TELECOMMUNICATIONS FACILITIES,  
OF ZONING ORDINANCE ADOPTED BY ORDINANCE NO. 15,816

This notice presents in full the text of Article 4, “Wireless Telecommunications Facilities”, of Chapter 134 of the Des Moines Municipal Code, Zoning Ordinance, which Article repealed and replaced the City’s Wireless Telecommunications Facility Policy adopted on April 8, 2019 by Roll Call No. 19-0580. Said Zoning Ordinance was adopted on October 16, 2019, by Ordinance No. 15,816, which ordinance amends the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended. The adopted Ordinance, including Article 4 thereof, is on file and available for viewing by the public between the hours of 8:00 a.m. and 5:00 p.m. in the office of the City Clerk, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, or on the City of Des Moines’ website at [www.dsm.city](http://www.dsm.city). The Zoning Ordinance including Article 4 thereof shall be in full force and effect December 15, 2019.

Chapter 134. Zoning

ARTICLE 4. WIRELESS TELECOMMUNICATIONS FACILITIES

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134-4. WIRELESS TELECOMMUNICATIONS FACILITIES

134-4.1 Applicability

- 4.1.1 The provisions of this article apply to all wireless telecommunications facilities unless otherwise expressly indicated.

- 4.1.2 The provisions of this article shall not be construed as:
- A. Prohibiting administration and enforcement of airport zoning for the protection of navigable airspace, pursuant to Iowa Code chapter 329, by an airport, aviation authority, or municipality;
  - B. Infringing upon the jurisdiction of a historic preservation district commission to approve or deny applications for proposed alterations to exterior features within an area designated as an area of historical significance; or
  - C. Infringing upon the jurisdiction of the city, applicable county, or historic preservation commission to approve or deny applications for proposed alterations to exterior features of designated local historic landmarks.

134-4.2 Where Allowed

Wireless telecommunications facilities and services are allowed in those zoning districts and locations indicated in Table 134-4.2-1 of this article.

TABLE 134-4.2-1, showing type of facility/service allowed by zoning district, is on file in the office of the City Clerk, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

134-4.3 Applications Generally

4.3.1 Every applicant shall file a completed application, in a form provided and approved by the City, as follows:

- A. Applications for wireless telecommunications service use within the public right-of-way shall comply with this chapter but shall be submitted to the city's traffic engineer in accordance with the requirements of chapter 102 of this code.
  - B. Applications for wireless telecommunications service use upon any city-owned property outside of public right-of-way shall comply with this chapter but shall be submitted to the city's engineering department, real estate division director.
  - C. All other applications for wireless telecommunications service use shall comply with this chapter and be submitted to the City's Permit and Development Center.
  - D. Applicants shall submit the number of copies and attachments required by the applicable city department responsible for receiving applications and shall comply with the city's land use ordinances and permitting process.
- 4.3.2 Applications for wireless telecommunications service shall not require or be evaluated based upon:
- A. Except as provided in section 134-4.4 of this article, information about an applicant's business decisions with respect to the applicant's designed service, customer demand for service, or quality of the applicant's service to or from a particular area or site;
  - B. Availability of other potential locations for the placement or construction of a tower or transmission equipment;
  - C. Except as provided in section 134-4.4 of this article, other options for collocation instead of the construction of a new tower or modification

of an existing tower or existing base station that constitutes a substantial change to an existing tower or existing base station; however, applicants are encouraged to consider collocation options prior to submitting an application;

- D. The requirement for removal of existing towers, base stations, or transmission equipment, wherever located, other than requirements stated in policy approved by city council resolution for removal of abandoned towers or transmission equipment;
  - E. Surety requirements, including bonds, escrow deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused towers or transmission equipment can be removed, other than requirements stated in policy approved by city council resolution that are competitively neutral, nondiscriminatory, reasonable in amount, and commensurate with the historical record for local facilities and structures that are abandoned;
  - F. Applicant's agreement to provide space on or near the tower, base station, or wireless support structure for the city or for other local governmental or nongovernmental services at less than the market rate for such space or to provide other services via the structure or facilities at less than the market rate for such services;
  - G. Environmental testing, sampling, or monitoring requirements, or other compliance measures, for radio frequency emissions from transmission equipment that are categorically excluded under FCC rules for radio frequency emissions pursuant to 47 CFR 1.1307(b)(1);
  - H. Regulations or procedures for radio frequency signal strength or the adequacy of service quality;
  - I. Perceived or alleged environmental effects of radio frequency emissions, as provided in 47 USC 332(c)(7)(B)(iv); or
  - J. Any review requirements or review criteria prohibited by Iowa Code Chapter 8e, the Spectrum Act, similar FCC regulations, or other applicable state and federal law.
- 4.3.3 The city shall not deny an application due to the type of transmission equipment or technology to be used by the applicant, or preference for type of infrastructure or technology; and shall not prohibit the placement of emergency power systems that comply with federal and state environmental requirements.
- 4.3.4 The city further shall approve or deny applications for small wireless facilities, and for new utility poles and wireless support structures installed for the siting of a small wireless facility, in accordance with the requirements of Iowa Code section 8C.7A(c)(3) and any other applicable sections of Iowa Code chapter 8C relating thereto.
- 4.3.5 The application fees to be paid shall be determined by reference to a schedule of permit fees, which shall be developed in conformance with the requirements of Iowa Code Section 8C.3(9), shall be updated as needed, and shall be approved by the city council by resolution.
- 4.3.6 Applications shall remain valid for a period of two years from the date of final approval, including disposition of any appeals. Construction of approved

structures or facilities shall be commenced within two years of final application approval and diligently pursued to completion.

134-4.4 Applications for New Towers

In addition to the general application requirements of section 134-4.3 of this article, applications for new towers must include the following:

- 4.4.1 An explanation of the reason for choosing the proposed location and why collocation was not selected, including a sworn statement from an individual with responsibility over placement of the tower attesting that collocation within the area determined by the applicant to meet the applicant's radio frequency engineering requirements for the placement of a site would not result in the same mobile service functionality, coverage, and capacity, is technically infeasible, or is economically burdensome to the applicant; and
- 4.4.2 Propagation maps, to be used solely for the purpose of identifying the location of the coverage or capacity gap or need for applications for new towers in an area zoned for residential use. Such maps are to be used for no other purpose.

134-4.5 Review and Approval Procedures

4.5.1 SMALL WIRELESS FACILITIES AND UTILITY POLES

Applications for small wireless facilities and for utility poles shall be processed as follows:

- A. The community development director, or other city representative as applicable per section 134-4.3.1.AC, shall approve or disapprove the application, by written decision provided to the applicant, and documenting the basis for denial if applicable including the specific code provisions or standards on which the denial is based:
  - 1. Within 60 days following the submission of a completed application for only collocation of small wireless facilities on pre-existing structures;
  - 2. Within 90 days following the submission of a completed application for utility poles, for new construction of facilities for placement of small wireless facilities, and for both or either of those combined with collocations of small wireless facilities on pre-existing structures; or
  - 3. Within 120 days following the submission of a completed application for collocation(s) of small wireless facilities on pre-existing structures, for utility poles, for new construction of facilities for placement of small wireless facilities, or for any combination thereof, if a 30-day extension is applicable and notification given in accordance with Iowa Code Section 8C.7A(3)(c).
- B. An applicant whose application is denied shall have an opportunity to cure any deficiencies identified by the city as the basis for the denial and to submit a revised application within 30 days following the date of denial without paying an additional fee. The city shall approve or deny a revised application within 30 days following submission. The city shall not identify any deficiencies in a second or subsequent denial that were not identified in the original denial.

#### 4.5.2 WIRELESS TELECOMMUNICATIONS FACILITIES OTHER THAN SMALL WIRELESS FACILITIES AND UTILITY POLES

Applications for any wireless telecommunications service use other than for small wireless facilities, utility poles, or eligible facilities requests, will not be accepted by the city for processing unless a pre-application conference has occurred in accordance with section 134-6.1.3 of this chapter. Applications for any wireless telecommunications service use other than for small wireless facilities and for utility poles shall be processed as follows:

- A. Within 30 days of acceptance of an application, city staff shall provide written notice to the applicant of all deficiencies in the application relating to the city's applicable zoning regulations and building permit requirements, setting forth the city code sections and city policies for reference. The applicant shall provide all required information or necessary revisions as set forth in such notice.
- B. Within 10 days of the date that the applicant supplements Its submission in accordance with the city's notice, city staff shall provide written notice to the applicant of any continued deficiencies in the application, setting forth the city code sections and city policies for reference as also provided in the original notice. The applicant may supplement Its submission, and the city may provide notice of deficiencies, until such time as the applicant provides all required information and/or makes all necessary revisions to its plans.
- C. No application shall be deemed complete until all deficiencies stated in such notices, if any, have been cured.
- D. Unless extended due to notices and responses as described above in subsections A and B. of this subsection, the community development department director shall approve or disapprove the application, by written decision provided to the applicant:
  1. Within 150 calendar days of the date of submission for applications for new towers;
  2. Within 50 calendar days of the date of submission for applications for eligible facilities requests; or
  3. Within 90 calendar days of the date of submission for applications for:
    - a. Initial placement or installation of base stations or transmission equipment on wireless support structures;
    - b. Modification of an existing tower or existing base station that constitutes a substantial change; or
    - c. A request for construction or placement of transmission equipment that does not constitute an eligible facilities request.

#### 4.5.3 ERRONEOUS SUBMITTAL

If the community development department director finds that an application submitted under this section does not meet the definition of an eligible facilities request, the city shall notify the applicant in writing that the application shall be processed as an application for a new tower, or as an application for initial

placement or installation of a base station or transmission equipment on wireless support structures, or for modification of an existing tower or existing base station that constitutes a substantial change, or for a request for construction or placement of transmission equipment that does not constitute an eligible facilities request, or as a small wireless facility application, or as an application for Installation of a utility pole or wireless support structure for the siting of a small wireless facility, accordingly, and the applicable timeframe for review shall commence on the date stated on said notice.

#### 4.5.4 CONDITIONAL USES

Conditional use approval from the board of adjustment shall be required for approval of wireless telecommunications service uses as identified in Table 134-4.2-1 of this article. If conditional use approval is required, the approval or disapproval of the application shall occur within the applicable timeframe and subsequent to board of adjustment action thereon and in accordance therewith.

#### 4.5.5 ZONING COMPLIANCE AND SITING REVIEW

Zoning compliance and siting review by the community development director shall be required for approval of wireless telecommunications service uses as identified in Table 134-4.2-1 of this article. If zoning compliance and siting review is required, the approval or disapproval of the application shall occur within the applicable timeframe and subsequent to such review and in accordance therewith.

#### 4.5.6 PUD, PLANNED UNIT DEVELOPMENT (LEGACY) DISTRICT AMENDMENT

Planned Unit Development (PUD -Legacy) District amendment pursuant to section 134-2.2.9.C of this chapter of this chapter, shall be required for approval of wireless telecommunications uses as identified in Table 134-4.2-1 of this article. If PUD amendment is required, the approval or disapproval of the application shall occur within the applicable timeframe and subsequent to city council action thereon and in accordance therewith.

#### 4.5.7 APPEALS

Appeal of the city's written decision, by the board of adjustment or by the community development department director, as applicable, shall be made to any court of competent jurisdiction. Notwithstanding the foregoing, the decision of the city's traffic engineer shall be treated as the city's final decision for an appeal relating to an application for wireless telecommunications service use within the public right-of-way, and the decision of the city's engineering department, real estate division director or of the city manager, as applicable, shall be treated as the city's final decision for an appeal relating to an application for wireless telecommunications service upon any city' owned property outside of public right-of-way.

#### 134-4.6 Design Requirements for New and Modified Towers

The following requirements and criteria are applicable to new towers and modifications of existing towers that constitute a substantial change:

- 4.6.1 A tower shall be set back from the property line of any adjoining residentially zoned property a distance equal to the height of the tower and its related equipment, unless a lesser setback is required due to the type of transmission

equipment or technology proposed by the applicant, and the tower and related equipment shall be adequately screened from adjoining residential uses.

- 4.6.2 A tower and any related equipment thereon shall be painted a color compatible with the surrounding area.
  - 4.6.3 Except for the minimum lighting, if any, necessary to comply with the airport height and hazard zoning regulations in chapter 22 of this code and any applicable federal regulations, no lights may be mounted on a tower or its related equipment, and the tower and antenna shall not be illuminated.
  - 4.6.4 The height of a tower, inclusive of any related equipment thereon, shall not exceed 180 feet unless additional height is required due to the type of transmission equipment or technology proposed by the applicant.
  - 4.6.5 Any service building or equipment located at grade shall be adequately screened from adjoining residential uses and shall be compatible with the building requirements set forth in chapter 135 of this code for the applicable zoning district.
  - 4.6.6 The adverse visual impact of a tower shall be minimized through careful design, siting, landscape screening and innovative camouflaging techniques. Unless otherwise required due to the type of transmission equipment or technology proposed by the applicant, at a tower site, the design of the buildings and related equipment shall use materials, colors, textures, screening, and landscaping that will blend the facilities with the natural setting and the built environment. If the built environment is anticipated to change significantly during the usable life of the tower, such as within an urban renewal district or recently annexed areas, the tower or structure shall be compatible with the anticipated future built environment.
  - 4.6.7 Modifications to existing towers shall not defeat existing concealment elements of the tower, and shall comply with all conditions associated with the prior approval of construction or modification of the tower, including but not limited to building code, zoning ordinance, and permit conditions, unless required due to the type of transmission equipment or technology proposed by the applicant.
  - 4.6.8 Modifications shall not increase the standard number of new equipment cabinets for the technology involved, not to exceed four cabinets, and shall not cause excavation or deployment to occur outside the current site of the tower, unless required due to the type of transmission equipment or technology proposed by the applicant.
- 134-4.7 Design Requirements for Wireless Telecommunications Facilities other than New and Modified Towers
- The following requirements and criteria shall apply to all wireless telecommunication service uses other than new towers or modifications of existing towers that constitute a substantial change. For purposes of this subsection only, unless otherwise specified, "transmission equipment" includes "transmission equipment," "base station," "small wireless facility," and "utility pole."
- 4.7.1 Transmission equipment shall be placed upon or within a wireless support structure such as to minimize visibility of the transmission equipment to the fullest extent technologically possible, unless visible placement is required due

to the type of transmission equipment or technology proposed by the applicant, including but not limited to the following:

- A. Wall mounted transmission equipment shall be mounted in a configuration that is as flush to the wall as technologically possible to ensure both the functionality of the antenna and to minimize visual impact and shall not project above the wall on which it is mounted.
- B. Transmission equipment mounted on roof appurtenances, such as mechanical equipment, must be as flush mounted to the existing mechanical equipment or roof appurtenance as technologically possible to ensure both the functionality of the antenna and to minimize visual impact.

- 4.7.2 Transmission equipment shall be designed and located so as to be architecturally compatible with the wireless support structure upon which the transmission equipment is mounted and to minimize any adverse aesthetic impact, unless otherwise required due to the type of transmission equipment or technology proposed by the applicant. A small wireless facility to be sited in city right-of-way on a utility pole, as defined herein or as defined by Iowa Code chapter 8C, shall reasonably match the aesthetics of an existing utility pole or wireless support structure that incorporates decorative elements.
- 4.7.3 Except for the minimum lighting, if any, necessary to comply with the airport height and hazard zoning regulations in chapter 22 of this code and any applicable federal regulations, no lights may be mounted on transmission equipment, and transmission equipment shall not be illuminated.
- 4.7.4 Transmission equipment upon a wireless support structure, and any related equipment located at grade, shall be adequately screened from adjoining residential uses.
- 4.7.5 The height of a wireless support structure, inclusive of the transmission equipment, shall not exceed the maximum height allowed by the applicable building type regulations, as established in Chapter 135 of this code, unless additional height is required due to the type of transmission equipment or technology proposed by the applicant. Notwithstanding the foregoing, the height of a utility pole installed in public right-of-way shall not exceed the greater of ten feet in height above the tallest utility pole existing on or before July 1, 2017, located within 500 feet of the utility pole in the same public right-of-way, or forty feet in height above ground level.
- 4.7.6 A wireless support structure, and transmission equipment, shall be set back from the property line of any adjoining residentially zoned property as required by the bulk regulations of the applicable zoning district.
- 4.7.7 Other than replacement of existing structures, new utility poles shall comply with the city's underground placement requirements in areas designated as underground districts pursuant to resolution or ordinance adopted by the city council prior to the date the application is filed in accordance with this section, and in areas zoned and used for single-household residential use.
- 4.7.8 The number of new utility poles or wireless support structures may be reasonably limited, consistent with the protection of public health, safety, and welfare, and provided that such limitation does not have the effect of prohibiting

or significantly impairing a wireless service provider's ability to provide wireless service Within the area of a proposed new structure.

- 4.7.9 Modifications to an existing base station shall not defeat existing concealment elements of the base station, and shall comply with all conditions associated with the prior approval of construction or modification of the base station, including but not limited to building code, zoning code, or permit conditions, unless required due to the type of transmission equipment or technology proposed by the applicant.
- 4.7.10 Modifications to an existing base station shall not increase the standard number of new equipment cabinets for the technology involved, not to exceed four cabinets, and shall not cause excavation or deployment to occur outside the current site of the base station, unless required due to the type of transmission equipment or technology proposed by the applicant.

#### 134-4.8 Board of Adjustment Prohibition

- 4.8.1 To ensure that this article is interpreted consistently with state and federal law, the board of adjustment is specifically prohibited from hearing appeals or considering variances or exceptions relating to definitions, or to procedural or other requirements set forth in state and federal law, including but not limited to Iowa Code Chapter 8e the Spectrum Act, and similar FCC regulations.
- 4.8.2 If the denial of any appeal for relief will result in denial of wireless telecommunications services, or If approval of an appeal for relief is necessary due to the type of technology proposed by an applicant, then the board of adjustment shall grant the relief sought, which may be subject to conditions allowed by city, state, and federal law.

#### 134-4.9 Definitions

The definitions of this section apply solely In administering and Interpreting the wireless telecommunications regulations of this ordinance. The following words, terms and phrases have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

**Applicant:** Any person, or any person acting on behalf of another person, engaged in the business of providing wireless telecommunications services or the wireless telecommunications Infrastructure required for wireless telecommunications services and who submits an application. This definition of "applicant" shall apply specifically to this article.

**Application:** A request submitted by an applicant for any wireless telecommunications service use requiring conditional use approval or zoning compliance and siting review as set forth in this article. This definition of "application" shall apply specifically to this article.

**Base Station:** Equipment not associated with a tower or a supporting structure that Is not a tower, at a fixed location, that, at the time that the application is filed, supports or houses an antenna, transceiver, distributed antenna system (DAS) equipment, small cell equipment, or other associated equipment that enables FCClicensed or FCC-authorized wireless communications between user equipment and a communications network and that has been previously reviewed and approved under the applicable zoning or siting process or under another state or local regulatory review process. "Base station" includes but is not limited to equipment associated with wireless communications

services such as private, broadcast, and public safety services and unlicensed wireless services and fixed wireless services such as microwave backhaul; radio transceivers; antennas; coaxial or fiberoptic cable; regular and backup power supplies; and comparable equipment, regardless of technological configuration.

**Collocation:** The mounting or installation of transmission equipment on an existing tower or base station for the purpose of transmitting or receiving radio frequency signals for communications purposes.

**Distributed Antenna System (DAS):** A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

**Eligible Facilities Request:** A request for modification of an existing wireless tower or base station, including legal non-conforming structures, that involves collocation, removal, or replacement of transmission equipment. and that does not constitute a substantial change to the tower or base station. "Eligible facilities request" applies only to towers or base stations for which the state or local government has approved the construction of the structure with the sole or primary purpose of supporting covered transmission equipment, such as existing wireless towers, or where the state or local government has previously decided that the site is suitable for wireless facility deployed and approved the siting of transmission equipment that is part of a base station on that structure, such as other existing support structures. "Eligible facilities request" includes hardening through structural enhancement where such hardening is necessary for a covered collocation, replacement, or removal of transmission equipment and structural enhancement so long as the modification of the underlying tower or base station is performed in connection with and is necessary to support a collocation, removal, or replacement of transmission equipment, but does not include replacement of the structure upon which the transmission equipment is located.

**Equipment Cabinet:** A cabinet mounted on the ground or on a wireless support structure used to support equipment associated with a wireless telecommunication facility.

**Existing:** Previously reviewed and approved under applicable zoning or siting processes, or under another form of affirmative state or local regulatory review process. "Existing" includes a wireless tower that does not have a permit or other zoning approval because it was not in a zoned area when it was built, but was otherwise lawfully constructed; and a structure that, at the time of the application, supports or houses a base station, even if the structure was not built for the sole or primary purpose of providing such support. "Existing" does not include a tower or base station that was constructed or deployed without proper review; was not required to undergo siting review; does not support transmission equipment that received another form of affirmative state or local regulatory approval; or any structure that is merely capable of supporting wireless transmission equipment whether or not it is providing such support at the time of the application. This definition of "existing" shall apply specifically to this article.

**FCC:** Federal Communications Commission.

**Notice:** Written document provided by city to applicant, stating all or continued deficiencies in an application relating to the city's applicable zoning regulations and building permit requirements, setting forth the city code sections and city policies for

reference, or identifying erroneous submittal of an application, or giving any other notice required by this article other than a written decision.

**Site:** All of the following:

1. For towers not within public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. This definition of "site" shall apply specifically to this article.
2. For other towers in the public right-of-way and all base stations, the area in proximity to the structure and to other transmission equipment deployed on the ground at the time of the application. This definition of "site" shall apply specifically to this article.

**Small Wireless Facility:** Operator-controlled, lowpowered radio access nodes, including those that operate in licensed spectrum and unlicensed carriergrade Wi-Fi, with a range from 10 meters to several hundred meters, and further defined as follows:

1. Each antenna is no more than six cubic feet in volume.
2. All other equipment associated with the small wireless facility is cumulatively no more than twenty-eight cubic feet in volume.
3. For purposes of this "small wireless facility" definition, volume shall be measured by the external displacement of the primary equipment enclosure, not the internal volume of such enclosure. An associated electric meter, concealment, telecommunications demarcation box, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switch, cutoff switch, cable, conduit, and any equipment that is concealed from public view within or behind an existing structure or concealment may be located outside of the primary equipment enclosure and shall not be included in the calculation of the equipment volume. "Small wireless facility" does not include any structural that supports or houses equipment described in this definition.

**Spectrum Act:** The federal Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-22, codified at 47 U.S.C. Section 1455 ("Section 6409 Wireless Facilities Deployment"), approved February 22, 2012.

**Substantial Change:** Any of the following:

1. The installation of more than the standard number of new equipment cabinets for the technology involved, and not to exceed four cabinets.
2. Any excavation or deployment outside the current site of the tower or base station.
3. Modifications that defeat the existing concealment elements of the tower or base station.
4. Modifications that do not comply with conditions associated with the prior approval of construction or modification of the tower or base station, including but not limited to building code, zoning code, or permit conditions, and that exceed one or more of the "substantial change" thresholds identified In this definition.
5. An increase in height, as follows:
  - i. For towers not within public rights-of-way, a cumulative increase in the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to

- exceed 20 feet, whichever is greater, measuring the change in height from the dimensions of the tower as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act, whichever is greater.
- ii. For towers within public rights-of-way, a cumulative increase in the height of the tower by more than 10% or 10 feet, whichever is greater, measuring the change in height from the dimensions of the tower as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act, whichever is greater.
  - iii. For all base stations, an increase in height of the base station by more than 10% or 10 feet, whichever is greater, measuring the change in height from the height of the original structure, rather than the height of the previously approved antenna.
6. An Increase in width, as follows:
1. For towers not within public rights-of-way, an increase in width from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
  2. For towers within public rights-of-way, and for all base stations, an increase in width from the edge of the structure more than six feet.

**Tower (or Communication Tower or Wireless Tower):** A structure constructed with the sole or primary purpose of supporting FCC-licensed or authorized transmission equipment, including transmission of personal wireless service, broadband service, and mobile and fixed broadband service.

**Transmission Equipment:** Any equipment, other than equipment related to a "small wireless facility" as defined in this section, that facilitates transmission for any FCC-licensed or FCC-authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply used in any technological configuration associated with any FCC-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast service, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband. The term "related equipment", when used in this chapter in reference to a tower or a base station, includes but is not limited to "transmission equipment."

**Utility Pole:** A pole or similar structure owned or installed by an applicant that is designed specifically for and used to carry one or more small wireless facilities and/or transmission equipment or wires for wireless telecommunications service use.

**Wireless Support Structure (or Structure):** A structure that exists at the time an application is submitted and is capable of supporting the attachment or installation of transmission equipment in compliance with applicable codes, including but not limited to water towers, buildings, and other structures, whether within or outside the public right-of-way. "Wireless support structure" or "structure" does not include a tower or existing base station.

**Written Decision:** The city's decision, provided to an applicant in writing, documenting approval or disapproval (denial) of an application, and further

documenting the basis for denial if applicable including the specific code provisions or standards on which the denial is based. The date stated on a written decision constitutes the "date of denial" or the "date of approval", as applicable, for purposes of this article. Written decisions may be issued by the community development director, or by the city traffic engineer, or by the city's engineering department, real estate division director or the city manager, or by decision and order of the board of adjustment, as applicable in accordance with this article.

**Zoning Compliance and Siting Review:** Administrative review by the community development director to determine if a wireless telecommunication use proposed in an application complies with this article, this chapter, and chapter 135 of this code. Approval or disapproval of an application may be based on the determination made during the zoning compliance and siting review.

CITY OF DES MOINES, IOWA

By: T.M. Franklin Cownie, Mayor

ATTEST: P. Kay Cmelik, City Clerk

I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is the full text of Article 4 of Ordinance No. 15,816, passed by the City Council of said City on October 16, 2019, signed by the Mayor on October 16, 2019, and published as provided by law in the Business Record in Polk County on November 22, 2019, Authorized by Publication Order No. 10953, and in the Indianola Record Herald in Warren County on November 20, 2019, Authorized by Publication Order No. 10954.

P. Kay Cmelik, City Clerk