Ordinance No. 915

AN ORDINANCE AMENDING THE REXBURG ZONING ORDINANCE CODE, CHAPTER FOUR ZONING BY ADDING A NEW SECTION (4.13) FOR CELLULAR TOWERS ENTITLED "WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS"; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING CONDITIONS FOR PERMITTED USES, ACCESSORY USES, AND CONDITIONAL USES; PROVIDING FOR PERMITS AND LEASE AGREEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Rexburg has received or expects to receive requests to site wireless communications towers and antennas within the municipal boundaries; and

WHEREAS, the City of Rexburg finds that it is in the public interest to permit the sitting of wireless communications towers and antennas within the municipal boundaries, and

WHEREAS, it is the intent of the City of Rexburg to permit the sitting of wireless communications towers and antennas within the municipal boundaries; and

WHEREAS, it is the intent of the City of Rexburg to protect and promote the public health, safety and welfare by regulating the sitting of wireless communications towers and antennas,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE COUNCIL FOR THE CITY OF REXBURG, IDAHO:

Section 1: Purpose. The purpose of this ordinance is to establish general guidelines for the sitting of wireless communications towers and antennas. The goals of this ordinance are to: (1) protect residential areas and land uses from potential adverse impacts of towers and antennas; (2) encourage the location of towers in non-residential areas; (3) minimize the total number of towers throughout the community; (4) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; (5) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; (6) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, sitting, landscape screening, and innovative camouflaging techniques; (7) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently; (8) consider the public health and safety of communication towers; and (9) avoid potential damage to adjacent properties from tower failure through engineering and careful sitting of tower structures. In furtherance of these goals, City of Rexburg shall give due consideration to the [Municipality's] master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

Section 2: Definitions. As used in this ordinance, the following terms shall have the meanings set forth below:

(a) "Alternative tower structure" means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

(b) "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

(c) "Backhaul network" means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

(d) "FAA" means the Federal Aviation Administration.

(e) "FCC" means the Federal Communications Commission.

(f) "Height" means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

(g) "Preexisting towers and preexisting antennas" means any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

(h) "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

Section 3: Applicability.

(a) New Towers and Antennas. All new towers or antennas in City of Rexburg shall be subject to these regulations, except as provided in Sections 3(b) through (d), inclusive.

(b) Amateur Radio Station Operators/Receive Only Antennas. This ordinance shall not govern any tower, or the installation of any antenna, that is under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.

(c) Preexisting Towers or Antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this ordinance, other than the requirements of Sections 4(f) and 4(g).

Section 4. General Requirements.

(a) Principal or Accessory Use. Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

(b) Lot Size. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

(c) Inventory of Existing Sites. Each applicant for an antenna and/or tower shall provide to the Planning and Zoning Department an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of City of Rexburg or within one mile of the border thereof, including specific information about the location, height, and design of each tower. The Planning and Zoning Department may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of City of Rexburg, provided, however that the Planning and Zoning Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(d) Aesthetics. Towers and antennas shall meet the following requirements:

(1) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

(2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

(3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(e) Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

(f) State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(g) Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City of Rexburg concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(h) Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in City of Rexburg irrespective of municipal and county jurisdictional boundaries.

(i) Not Essential Services. Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

(j) Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in City of Rexburg have been obtained and shall file a copy of all required franchises with the Planning and Zoning Department.

(k) Public Notice. For purposes of this ordinance, any Conditional Use request, variance request, or appeal of an administratively approved use or special use shall require public notice to all abutting property owners and all property owners of properties that are located within the corresponding separation distance listed in Section 7(b) (5) (ii), Table 2, in addition to any notice otherwise required by the Zoning Ordinance.

(l) Signs. No signs shall be allowed on an antenna or tower.

(m) Buildings and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of Section 8.

(n) Multiple Antenna/Tower Plan. City of Rexburg encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

Section 5. Permitted Uses.

(a) General. The uses listed in this Section are deemed to be permitted uses and shall not require administrative approval or a special use permit.

(b) Permitted Uses. The following uses are specifically permitted:

(1) Antennas or towers located on property owned, leased, or otherwise controlled by the City of Rexburg provided a license or lease authorizing such antenna or tower has been approved by City of Rexburg.

Section 6. Administratively Approved Uses.

(a) General. The following provisions shall govern the issuance of administrative approvals for towers and antennas.

(1) The Planning and Zoning Department may administratively approve the uses listed in this Section.

(2) Each applicant for administrative approval shall apply to the Planning and Zoning Department providing the information set forth in Sections 7(b)(1) and 7(b)(3) of this ordinance and a nonrefundable fee as established by resolution of Council to reimburse City of Rexburg for the costs of reviewing the application.

(3) The Planning and Zoning Department shall review the application for administrative approval and determine if the proposed use complies with Sections 4, 7(b) (4) and 7(b) (5) of this ordinance.

(4) The Planning and Zoning Department shall respond to each such application within sixty (60) days after receiving it by either approving or denying the application. If the Planning and Zoning Department fails to respond to the applicant within said sixty (60) days, then the application shall be deemed to be approved.

(5) In connection with any such administrative approval, the Planning and Zoning Department may, in order to encourage shared use, administratively waive any zoning district setback

requirements in Section 7(b)(4) or separation distances between towers in Section 7(b)(5) by up to fifty percent (50%).

(6) In connection with any such administrative approval, the Planning and Zoning Department may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction.

(7) If an administrative approval is denied, the applicant shall file an application for a Conditional Use permit pursuant to Section 7 prior to filing any appeal that may be available under the Zoning Ordinance.

(b) List of Administratively Approved Uses. The following uses may be approved by the Planning and Zoning Department after conducting an administrative review:

(1) Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, in any industrial or heavy commercial zoning district.

(2) Locating antennas on existing structures or towers consistent with the terms of subsections (a) and (b) below.

(a) Antennas on existing structures. Any antenna which is not attached to a tower may be approved by the Planning and Zoning Department as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight or more dwelling units, provided:

(i) The antenna does not extend more than thirty (30) feet above the highest point of the structure;

(ii) The antenna complies with all applicable FCC and FAA regulations; and

(iii) The antenna complies with all applicable building codes.

(b) Antennas on existing towers. An antenna which is attached to an existing tower may be approved by the Planning and Zoning Department and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:

(i) A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the Planning and Zoning Department allows reconstruction as a monopole.

(ii) Height

(a) An existing tower may be modified or rebuilt to a taller height, not to exceed thirty (30) feet over the tower's existing height, to accommodate the collocation of an additional antenna; except, the tower may not exceed the elevation of the Rexburg water tower.

(b) The height change referred to in subsection (iii) (a) may only occur one time per communication tower.

(c) The additional height referred to in subsection (iii) (a) shall not require an additional distance separation as set forth in Section 7. The tower's pre-modification height shall be used to calculate such distance separations.

(iii) Onsite location

(a) A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within fifty (50) feet of its existing location.

(b) After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.

(c) A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to section 7(b) (5).

The relocation of a tower hereunder shall in no way be deemed to cause a violation of Section 7(b) (5).

(d) The onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands as established in Section 7(b)(5) shall only be permitted when approved by the Planning and Zoning Department.

(3) New towers in non-residential zoning districts. Locating any new tower in a non-residential zoning district other than industrial or heavy commercial, provided a licensed professional engineer certifies the tower can structurally accommodate the number of shared users proposed by the applicant; the Planning and Zoning Department concludes the tower is in conformity with the goals set forth in Section 1 and the requirements of Section 4; the tower meets the setback requirements in Section 7(b)(4) and separation distances in Section 7(b)(5); and the tower meets the following height and usage criteria:

(i) for a single user, up to ninety (90) feet in height;

(ii) for two users, up to one hundred twenty (120) feet in height; and

(iii) for three or more users, up to one hundred fifty (150) feet in height; Except, the tower may not exceed the elevation of the Rexburg water tower.

(4) Locating any alternative tower structure in a zoning district other than industrial or heavy commercial that in the judgment of the Planning and Zoning Department is in conformity with the goals set forth in Section 1 of this ordinance.

(5) Installing a cable micro cell network through the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

Section 7. Conditional Use Permits.

(a) General. The following provisions shall govern the issuance of special use permits for towers or antennas by the Planning Commission:

(1) If the tower or antenna is not a permitted use under Section 5 of this ordinance or permitted to be approved administratively pursuant to Section 6 of this ordinance, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.

(2) Applications for special use permits under this Section shall be subject to the procedures and requirements of Chapter 6.13 [Chapter on Conditional uses] of the Zoning Ordinance, except as modified in this Section.

(3) In granting a Conditional Use Permit, the Planning Commission may impose conditions to the extent the Planning Commission concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

(4) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.

(5) An applicant for a Conditional Use Permit shall submit the information described in this Section and a non-refundable fee as established by resolution of the Council to reimburse City of Rexburg for the costs of reviewing the application.

(b) Towers.

(1) Information required. In addition to any information required for applications for Conditional Use Permits pursuant to Chapter 6.13 [Chapter on Conditional Uses] of the Zoning Ordinance, applicants for a Conditional Use Permit for a tower shall submit the following information:

(i) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning, Master Plan classification of the site and all properties within the applicable separation distances set forth in Section 7(b)(5), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, site elevations, parking, and other information deemed by the Planning and Zoning Department to be necessary to assess compliance with this ordinance.

(ii) Legal description of the parent tract and leased parcel (if applicable).

(iii) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.

(iv) The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 4(c) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.

(v) A landscape plan showing specific landscape materials.

(vi) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

(vii) A description of compliance with Sections 4(c), (d), (e), (f), (g), (j), (l), and (m), 7(b) (4), 7(b) (5) and all applicable federal, state or local laws.

(viii) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.

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

(x) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

(xi) A description of the feasible location(s) of future towers or antennas within the City of Rexburg based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

(2) Factors Considered in Granting Conditional Use Permits for Towers. In addition to any standards for consideration of Conditional Use Permits applications pursuant to Chapter 6.13 [Chapter on Conditional uses] of the Zoning Ordinance, the Planning Commission shall consider the following factors in determining whether to Conditional Use Permits, although the Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Planning Commission concludes that the goals of this ordinance are better served thereby:

(i) Height and elevation of the proposed tower;

(ii) Proximity of the tower to residential structures and residential district boundaries;

(iii) Nature of uses on adjacent and nearby properties;

(iv) Surrounding topography;

(v) Surrounding tree coverage and foliage;

(vi) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

(vii) Proposed ingress and egress; and

(viii) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in Section 7(b)(3) of this ordinance.

(3) Availability of Suitable Existing Towers, Other Structures, or Alternative Technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's a proposed antenna. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

(i) No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.

(ii) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

(iii) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

(iv) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

(v) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(vi) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(vii) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable micro cell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

(4) Setbacks. The following setback requirements shall apply to all towers for which a Conditional Use Permit is required; provided, however, that the Planning Commission may reduce the standard setback requirements if the goals of this ordinance would be better served thereby:

(i) Towers must be set back a distance equal to at least seventy-five percent (75%) of the height of the tower from any adjoining lot line.

(ii) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

(5) Separation. The following separation requirements shall apply to all towers and antennas for which a Conditional Use Permit is required; provided, however, that the Planning Commission may reduce the standard separation requirements if the goals of this ordinance would be better served thereby.

(i) Separation from off-site uses/designated areas.

(a) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.

(b) Separation requirements for towers shall comply with the minimum standards established in Table 1.

Table 1:

Off-site Use/Designated Area	Separation Distance
Single-family or duplex residential units[1]	200 feet or 300% height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% height of tower[2] whichever is greater
Vacant unplatted residentially zoned lands[3]	100 feet or 100% height of tower whichever is greater
Existing multi-family residential units greater than duplex units	100 feet or 100% height of tower whichever is greater
Non-residentially zoned lands or non-residential uses	None; only setbacks apply

[1]Includes modular homes and mobile homes used for living purposes.
[2]Separation measured from base of tower to closest building setback line.
[3]Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex.

(ii) Separation distances between towers.

(a) Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower.

The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 2:

Existing Towers - Types

	Lattice	Guyed	Monopole 75 Ft in Height or Greater	Monopole Less Than 75 Ft in Height
Lattice	5000	5000	1,500	750
Guyed	5000	5000	1,500	750
Monopole 75 Ft in Height or Greater	1,500	1500	1,500	750
Monopole Less Than 75 Ft in Height	750	750	750	750

(6) Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Planning Commission may waive such requirements, as it deems appropriate.

(7) Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the Planning Commission may waive such requirements if the goals of this ordinance would be better served thereby.

(i) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.

(ii) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

(ii) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

Section 8. Buildings or Other Equipment Storage.

(a) Antennas Mounted on Structures or Rooftops. Towers or associated cabinets are not allowed on roof tops or existing structures.

(b) Antenna's Support Cabinets. The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:

(1) In residential districts, the equipment cabinet or structure may be located:

(i) In a front or side yard provided the cabinet or structure is no greater than 8 feet in height or 100 square feet of gross floor area and the cabinet/structure is located a minimum of 25 feet from all front yard lines and 6 feet from side yard setbacks, (lot lines). The cabinet/structure shall be screened by an evergreen hedge with an initial height of at least 42-48 inches.

(ii) In a rear yard, provided the cabinet or structure is no greater than 8 feet in height or 100 square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 48 inches.

(2) In commercial or industrial districts the equipment cabinet or structure shall be no greater than 8 feet in height or 169 square feet in gross floor area. The structure or cabinet shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by solid fence 6 feet in height or an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.

(c) Antennas Located on Towers. The related unmanned equipment structure shall not contain more than 100 square feet of gross floor area or be more than 8 feet in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which located.

(d) Modification of Building Size Requirements. The requirements of Sections 8(a) through (c) may be modified by the Planning and Zoning Department in the case of administratively approved uses or by the Planning Commission in the case of uses permitted by special use to encourage collocation.

Section 9. Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the City of Rexburg notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) day shall be grounds to

remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

Section 10. Nonconforming Uses.

(a) No Expansion of Nonconforming Use. Towers that are constructed and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

(b) Preexisting towers. Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this ordinance.

(c) Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding Section 9, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a Conditional Use Permit and without having to meet the separation requirements specified in Sections 7(b)(4) and 7(b)(5). The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 9.

Section 11. Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 12. Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 13. Effective Date. This Ordinance shall take effect August 21, 2004.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 18th day of August, 2004.

Shawn Larsen

Shawn Larsen, Mayor

ATTEST:

Blair D. Kay

Blair D. Kay, City Clerk

(SEAL)

STATE OF IDAHO)
ss.
Madison County)

I, Blair D. Kay, City Clerk of the City of Rexburg, Idaho, do hereby certify: That the above and foregoing is a full, true and correct copy of the ordinance entitled:

AN ORDINANCE AMENDING THE REXBURG ZONING ORDINANCE CODE, CHAPTER FOUR ZONING BY ADDING A NEW SECTION (4.13) FOR CELLULAR TOWERS ENTITLED "WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS"; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING CONDITIONS FOR PERMITTED USES, ACCESSORY USES, AND CONDITIONAL USES; PROVIDING FOR PERMITS AND LEASE AGREEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

Passed by the City Council and approved by the Mayor this 18th day of August, 2004.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City of Rexburg, this 18th day of August, 2004.

Blair D. Kay

Blair D. Kay, City Clerk

(SEAL)