ORDINANCE NO. 677

AN ORDINANCE OF THE TOWN OF PINEDALE, WYOMING AMENDING ARTICLE XL OF CHAPTER 475 **CONCERNING TOWERS, ANTENNAS, AND POLES.**

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PINEDALE, WYOMING, THAT ARTICLE XL OF CHAPTER 475 OF THE PINEDALE MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

ARTICLE XL

TOWERS, ANTENNAS AND POLES

§ **475-330. Intent and Purpose.**

The intent of this Article is to provide the Town of Pinedale with access to fast reliable wireless communications and technologies while minimizing the number of macro cell towers in and around town. The Town may provide land for the construction and operations of wireless communication towers in acceptable locations. Locations will provide adequate coverage for the Town and the surrounding communities. Providers will be strongly encouraged to collocate on macro cell towers built at the provided areas.

It is further the intent of this Article to protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the Town's goal to minimize the visual impact of wireless communication facilities on the community, particularly in and near residential districts, downtown and in and along highly visible corridors and entrances to the community.

This Article regulates macro cell towers, antennas and poles, along with small wireless facilities as herein defined, to: (1) protect residential areas and land uses from potential adverse economic impacts of macro cell towers, antennas or poles; (2) encourage the location of towers, antennas and poles in nonresidential areas; (3) encourage the joint use of new and existing macro cell tower sites as a primary option rather than construction of additional single-use towers; (4) encourage users of towers, antennas or poles to locate them in areas where the adverse effects on the community are minimal; and (5) provide adequate area surrounding towers to minimize damage to people and property if a failure occurs. This Article is enacted to promote and protect the health, safety, and general welfare of the citizens of the Town of Pinedale.

This Article provides regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of wireless services, (2) discriminate among functionally equivalent service providers, or (3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

§ **475-331. Definitions.**

ANTENNA: Any exterior transmitting and/or receiving wireless communication device used exclusively by commercial entities mounted on a tower, building or structure and

used in communications, unless specifically prohibited by the FCC. Antennas used by amateur ham radio operators are excluded from this definition.

ANTENNA TOWER HEIGHT: Vertical distance from the finished grade of the lot or parcel to the highest point on the structure, including the highest antenna. In cases where substantial fill is proposed, "finished grade" shall be established by the Town, consistent with parcels in the immediate vicinity, and shall not be, nor have been artificially raised to gain additional antenna/tower height.

APPLICANT: Any person engaged in the business of providing wireless services or the wireless infrastructure required for wireless services and who submits an application.

APPLICATION: A written request, on a form provided by the Town, for a permit.

COLLOCATION: The mounting or installation of equipment on a tower, pole, building or other structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

FAA: Federal Aviation Administration.

FCC: Federal Communications Commission.

GUYED TOWER: A tower that is supported by use of cables (guy wires) that are permanently anchored to the ground.

LOT SIZE: The dimensions of the entire lot (if platted) or parcel (if unplatted) shall control for purposes of measurements under this section, even though the towers, antennas or poles may be located on leased parcels within a lot. "Lot" as used in this section shall include both platted lots and unplatted parcels.

MACRO CELL: An antenna or antennas mounted on or in a tower, ground-based mast, rooftops or structures, at a height that provides coverage to the surrounding area and exceeds the dimensional limits applicable to small wireless facilities.

PROVIDER: A wireless services provider or wireless infrastructure provider and includes any person who owns or operates wireless facilities within or outside of the right-of-way.

SMALL WIRELESS FACILITIES: Equipment that meets the following criteria: (1) the facilities -- (i) are mounted on structures fifty (50) feet or less in height including their antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater; (2) each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume; (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 twenty eight (28) cubic feet in volume; (4) the facilities do not require antenna structure registration under federal law; (5) the facilities are not located on Tribal land as defined under federal law; and (6) the facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified under federal law.

TOWER: Any structure, temporary or permanent, built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

WIRELESS INFRASTRUCTURE PROVIDER: A person or entity, other than a wireless services provider, that builds or installs towers, wireless transmission equipment, wireless facilities poles or wireless support structures.

WIRELESS SERVICES: Any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

WIRELESS SERVICES PROVIDER: A person or entity who provides wireless services.

§ **475-332. Applicability and Exempt Facilities.**

A. Towers, antennas, poles and related equipment (including small wireless facilities) shall be permissible subject to the provisions of this Article.

B. Macro cell towers, antennas or poles, freestanding or building-mounted, shall not exceed the maximum height requirements permitted in the underlying zone district without receiving a conditional use permit and building permit from the Town. If the tower or pole is to exceed the zoning height limit, the applicant shall follow the conditional use application process as described in § 160-22 and include all information required in this Article with the application. If the proposed structure, facilities or equipment exceed the maximum height requirements permitted in the underlying zone district, then a variance is also required.

C. Except as set forth below, all towers, antennas, poles and related equipment (including small wireless facilities) shall require a building permit.

D. Commercial macro cell towers shall not be constructed in residential zone districts.

E. The following uses shall be specifically permitted as accessory uses by right and shall not require a building permit:

(1) Amateur radio antennas (ham radio facilities) in all zoning districts, for the exclusive use of the occupants of the building on the lot where the antenna is located, subject to State and Federal law requirements;

(2) Television and radio antennas in nonresidential zoning districts for the exclusive use of owners or tenants of the property where located, and that do not exceed the zone district's maximum height limit;

(3) Antennas, similar hardware or dishes installed in all zones, for the purposes of receiving satellite television, radio transmissions, internet service or any other similar service for the exclusive use of occupants of the building to which it is attached, provided that the antenna, similar hardware or dish is attached to an existing structure, and provided the antenna does not exceed the zone district's maximum height limit. This exemption shall not apply to antennas, similar

hardware or dishes installed on residential structures or other buildings or structures for commercial transmission purposes;

(4) A temporary, commercial facility installed for providing coverage of a special event such as news coverage or sporting event, subject to any required approvals by the Town. The facility shall be exempt from the provisions of this Article for up to two (2) weeks before and one week after the duration of the special event;

(5) Temporary facilities and equipment installed upon the declaration of a state of emergency by the federal, State or local government, or a written determination of public necessity by the Town; except that such facility or equipment must comply with all federal and State requirements;

(6) Town facilities, equipment and services, including, but not limited to, those involving police, fire, public health and safety;

(7) Fixed wireless broadband service; and

(8) Antennas attached to utility poles and light poles upon private property in all zoning districts, provided the antenna does not extend more than three feet above the highest point of the pole structure. Antennas attached to utility poles and light poles within the public right-of-way shall not extend more than three feet above the highest point of the pole structure and may be installed: (1) when permitted by the pole owner's franchise; or (2) by amendment to the pole owner's franchise ordinance or right-of- way use easement and agreement with the consent of the Town Council and upon payment of reasonable compensation for use of the right-of-way.

§ **475-333. General Provisions.**

A. State and Federal Requirements. All towers, antennas and poles shall meet the standards and requirements of the FAA, FCC, and any other agency of the local, state or federal government with jurisdiction to regulate towers, antennas or poles.

B. Building Codes - Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall be responsible for constructing and maintaining it in compliance with applicable federal, state and local building code standards and applicable Industry standards for towers.

C. Prohibited. New guyed or lattice towers are prohibited within Town limits.

D. Agreements. Owners and operators of towers, antennas and poles shall certify to the Town's satisfaction that all agreements required for the construction or operation of such towers, antennas or poles have been filed or recorded, as applicable.

E. Bonding. Applicants may be required to provide a bond to ensure removal of any new tower from public property in a form and amount acceptable to the Town. If required, the bond shall be provided to the Town prior to the commencement of construction of any approved new tower on public property. The amount of the bond shall equate to the cost for removal of the tower if it is abandoned by the tower owner.

F. Permit Required. No person may construct or install in or outside of the right-of-way any new wireless facilities without first receiving a permit as required by this Article. Notwithstanding the foregoing, in the event of an emergency, a provider or its duly authorized representative may commence work prior to obtaining a permit, provided that the provider shall contact the Town prior to commencing the work and shall apply for a permit as soon as reasonably possible, but not later than twenty-four (24) hours after commencing the emergency work.

Other than a temporary, commercial facility as provided in Section 475-332, a building permit and administrative review shall be required for a Cell On Wheels ("COW") and the COW may be placed in a commercial district for a period of up to one (1) year if the applicant subsequently constructs substantial capital improvements, such as a cell tower, in the Town. If the provider does not intend to construct substantial capital improvements, such as a cell tower in the Town, the COW can remain in place for up to six (6) months in the commercial district so long as the provider obtains a building permit and administrative approval before installing the COW. If the proposed COW, facilities or equipment exceed the maximum height requirements permitted in the underlying zone district, then a conditional use permit and variance are also required.

G. Ordinary Maintenance and Repair. A permit shall not be required for ordinary maintenance and repair. The provider or other person performing the ordinary maintenance and repair shall obtain any other permits required by applicable laws and shall notify the Town in writing at least forty-eight (48) hours before performing the ordinary maintenance and repair.

H. Application Fees. All applications pursuant to this Article shall be accompanied by the requisite fees required by the Town.

I. Effect of Permit. A permit from the Town authorizes an applicant to undertake only the activities specified in the application and permit, and in accordance with this Article. A permit does not authorize attachment to or use of existing poles or other structures in or outside of the right-of-way. A permittee or provider must obtain all necessary written approval from the owner of any pole or other support structure prior to any attachment or use and such written approval shall be submitted with the permit request. A permit does not create a property right for the applicant.

J. Site Development for Small Wireless Facilities. All small wireless facilities shall be subject to standards, building permits and site plan applications. An application shall contain the following information:

(1) Construction drawings showing the proposed method of installation, height and width of the proposed small wireless facilities, including the pole; and

(2) A diagram to scale showing the location of the small wireless facilities, power lines, easements and related structures and equipment.

K. Visual Impact. All small wireless facilities shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the small wireless facilities.

L. Design Standards. Subject to the height limitation of the underlying zoning district, all poles built for the sole or primary purpose of supporting small wireless facilities may be approved through administrative review subject to the wireless provider complying with reasonable and feasible considerations for the:

(1) Height, shape, design and color for poles and related equipment;

(2) Number and location of poles that may be installed or used; and

(3) Aesthetic approach for different types of poles and related equipment.

M. Use of Stealth Design. The applicant shall use stealth design to the maximum extent feasible unless otherwise approved by the Town. Stealth and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features.

N. Pole-mounted Equipment. All pole-mounted transmission or receiving equipment shall be mounted as close as possible to the pole so as to reduce the overall visual profile to the maximum extent feasible subject to applicable safety codes.

O. License or Agreement. For small wireless facilities to be located within the right-of-way, prior to submitting for a permit, the applicant must, if required by the Town, have a valid municipal agreement, license, franchise agreement, right-of-way use agreement or exemption otherwise granted by applicable law.

P. Notification. Prior to the installation or construction of small wireless facilities within the right-of-way or a utility easement, the applicant or provider must notify all utilities located within such right-of-way or easement regarding the use of the right-of-way or easement. Before beginning any excavation in or outside of the right-of-way, the permittee shall comply with the One Call of Wyoming requirements.

Q. Site Design Flexibility. Individual sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the wireless facilities and supporting equipment may be installed so as to best camouflage, disguise or conceal them.

R. As-Builts and Maps. The provider shall furnish to the Town paper and electronic maps showing the location of its facilities and equipment in the right-of-way and as-builts after construction is completed.

S. General Safety and Compliance with Laws. The permittee shall employ due care during the installation, maintenance or other work in the right-of-way, and shall comply with all safety and construction requirements of applicable laws, Town guidelines, standards and practices and any additional commonly accepted safety standards.

T. Physical Interference. The permittee shall not physically interfere with any existing facilities or structures in the right-of-way, and shall locate its lines and equipment in such a manner as not to physically interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abut any right-of-way.

U. Compliance with Permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications. The Town and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All equipment that does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Article, shall be removed at the sole expense of the permittee. The Town may stop work in order to assure compliance with the provisions of this Article.

V. Radio Frequency Emissions. A written report will be prepared and signed by a professional engineer or qualified employee of the provider which assesses whether the proposed macro cell tower, antennas and small wireless facilities demonstrate compliance with the radio frequency emissions limits established by the FCC.

§ **475-334. Development Standards.**

A. Materials. Towers, antennas and poles, to the extent possible, shall be constructed using materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings. Buildings associated with a tower shall be designed to blend in with the surrounding area. Landscaping may be required by the Town to help improve the visual integrity of the site.

B. Commercial Macro Cell Tower Structural Requirements.

(1) All new macro cell towers shall be designed with the structural capacity to accommodate at least three collocated providers.

(2) All new towers shall be located upon sites that are large enough to contain the support equipment for at least three collocated providers.

(3) Towers shall not be loaded above the manufacturer's wind load requirements. New equipment may not be added that would cause the tower to exceed the limits.

C. Setbacks and Separation.

(1) Setbacks. Macro cell towers shall be set back from adjoining lot lines a distance equal to the height of the tower. Any tower proposed to be located on a lot with residential or occupied commercial structures, which structures are located at a distance from the tower base which is less than the height of the tower, shall require a building permit. In addition to all other considerations, the building permit process shall also include safety measures.

(2) Separation Distances Between Macro Cell Towers.

(a) Separation distances between macro cell towers shall be applicable for and measured between the proposed towers/antennas and existing towers/antennas. The separation distances shall be measured by a straight horizontal line between the center of the base of the existing macro cell tower, antenna or pole and the center of the base of the proposed macro cell tower, antenna or pole.

(b) For towers fifty (50) feet or less in height, including their antennas, or structures no more than ten percent (10%) taller than other adjacent structures, no separation distance is required; however, setback distances still apply.

(c) For towers other than those specified in (b) above, the separation distance shall be determined during the conditional use or other application process.

D. Buildings and Other Equipment.

(1) For antennas mounted on structures or rooftops, any equipment cabinet or structure used in association with antennas shall not be more than fifteen feet in height and shall comply with all applicable building codes and zoning requirements.

(2) For antennas mounted on utility poles or light poles, any associated equipment cabinet or structure may be located in or outside of the public right-of-way and in accordance with the following:

(a) In residential zoning districts, the equipment cabinet or structure may be located in a side or rear yard. The equipment cabinet or structure shall be no more than four feet in height, with a floor area of one hundred square feet or less, and shall be located at least twenty-five feet from all lot lines.

(b) In non-residential districts, the equipment cabinet or structure shall be no greater than six feet in height, and shall be screened from view by landscaping, fencing, or both, from all adjacent residential properties.

(3) For antennas located on macro cell towers, any related unmanned equipment cabinet or structure shall be no more than twenty feet in height, and shall be located in accordance with the minimum setback requirements for the zoning district in which it is located.

E. Collocations.

(1) Inventory of Existing Sites. Each applicant for a building permit for a macro cell tower shall provide to the Town an inventory of the applicant's existing macro cell towers and sites within the Town limits and within one mile outside of the Town limits, including specific information about the location, height, and type of communication service for each macro cell tower.

(2) No application for a building permit for a new macro cell tower shall be processed until the applicant has met with the Town prior to submitting the application, in order to review the feasibility of using an existing tower or structure. The applicant shall demonstrate that there is no existing facility that can reasonably accommodate the applicant's proposed antennas before the building permit application is processed. The Town may require the applicant to make reasonable efforts to collocate upon an existing tower. The Town may also require the applicant to make reasonable efforts to use a stealth tower. Collocation of facilities and/or stealth

design may be considered a mitigating factor or factors to a conditional use request and may justify the request.

(3) If an applicant claims that it cannot collocate upon an existing macro cell tower, the applicant shall provide a written report from a communications specialist, radio frequency expert or other professional in support of its position. The Town shall consider the written report in making its decision.

(4) Any applicant who is aggrieved by the decision of the Town Staff concerning a building permit application for a tower, antenna, pole or small wireless facilities may appeal the decision to the Town Council. Operational considerations, along with financial considerations, will be among the determining factors, used to decide issues regarding collocation disputes.

(5) A building permit shall be required for a tower that is being rebuilt to accommodate collocation of an additional antenna. After rebuilding, one tower only shall remain on the site. A relocated onsite tower shall meet all requirements of this Article.

F. Lighting. Towers shall not be artificially lighted unless required by the FAA, FCC or other authority having jurisdiction. Lighting shall not negatively impact neighbors or public safety.

G. Signs. No commercial messages or any other signs beyond safety warnings and an identification sign of not greater than two (2) square feet shall be placed on any tower or facility. If the FCC or any other organization having jurisdiction requires more signage, permission will not be unreasonably withheld.

§ 475-335. Removal

Any tower, antenna, pole or small wireless facilities not operated for six (6) consecutive months shall be considered abandoned. The owner of the tower, antenna, pole or small wireless facilities shall remove the same within ninety (90) days of abandonment. If not so removed by the owner, the Town, after notice, may remove such tower, antenna, pole or small wireless facilities and recover the cost thereof (including attorneys' fees) from the tower, land, antenna, pole or small wireless facilities owner or the bond posted under § 475-333E above. This provision shall not apply to any tower, antenna, pole or related equipment owned by the Town.

§ 475-336. New Construction.

All new construction, other than replacement of equipment with a similar size, design and color, shall comply with the requirements of this Article, including the issuance of a building permit.

§ 475-337. Conflicts.

If the terms of this Article conflict with any other applicable provision of local, state, or federal law, the more restrictive terms shall apply.

§ **475-338. Private and Public Property.**

This Article concerns towers, antennas, poles and small wireless facilities on private and governmental property. Use of public rights-of-way for any system or components of a system for the collection or distribution of signals which are transmitted or received by antennas may require a license, franchise or other agreement as is appropriate.

§ **475-339. Miscellaneous.**

§ **475-339.1. Town Towers.**

The Mayor shall decide all matters related to any tower owned by the Town. Any entity who is aggrieved by the decision of the Mayor regarding a tower owned by the Town may appeal the decision to the Town Council.

§ **475-339.2. Indemnification.**

Each permit issued for a tower, antenna, pole or small wireless facilities located on Town property (including the right-of-way) shall be deemed to have as a condition of the permit a requirement that the applicant and provider defend, indemnify and hold harmless the Town and its officers, agents, employees, volunteers and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, installation, construction, location, performance, operation, maintenance, repair, replacement or removal of the tower, pole, antenna or small wireless facilities, except to the extent such claims, suits, demands, or causes of action arise from the sole negligence or willful misconduct of the Town.

§ **475-339.3. Severability.**

The various parts, sentences, paragraphs, sections and clauses of this Article 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 this Article shall not be affected thereby.

PASSED ON FIRST READING ON November 23, 2020.
PASSED ON SECOND READING ON December 14, 2020.
PASSED, APPROVED AND ADOPTED ON THIRD READING ON January 11, 2021.

TOWN OF PINEDALE, WYOMING:

BY:_____
MATT W. MURDOCK, MAYOR

ATTEST:

_____
TOWN CLERK

ATTESTATION BY TOWN CLERK

STATE OF WYOMING)
COUNTY OF SUBLETTE) ss.
TOWN OF PINEDALE)

I hereby certify that the foregoing Ordinance No. ____ was duly published in the Pinedale Roundup, a newspaper of general circulation published in the Town of Pinedale, Wyoming, on the ____ day of _____, 2020.

I further certify that the foregoing Ordinance was duly recorded on Page ____ of Book ____ Ordinances of the Town of Pinedale, Wyoming.

_____
Town Clerk