

ORDINANCE NO. 196

THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA TO PROMOTE THE PUBLIC SAFETY, HEALTH AND WELFARE, HEREBY ORDAIN AS FOLLOWS:

AN ORDINANCE REGULATING TELECOMMUNICATION TOWERS, ANTENNAS AND RELATED FACILITIES WITHIN THE CITY OF ARLINGTON AND PROVIDING FOR ADMINISTRATION AND ENFORCEMENT OF SUCH REGULATIONS.

1.01. Findings. The City Council finds:

Subd. 1. The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (“the Act”) governs the construction, placement, and modification of personal wireless service facilities. Consistent with the Act, the general purpose of this section is to manage the placement, construction, and modification of telecommunication towers, antennas and related facilities in order to protect the health, safety and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the city.

Subd. 2. In furtherance of the goals of the city and within the framework of the Act and state law, the city will give due consideration to the city’s comprehensive plan, zoning districts, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas. Specifically, the purposes of this section are:

- a) to manage the location of telecommunication towers and facilities;
- b) to protect residential areas and land uses from potential adverse impacts of telecommunication towers and facilities;
- c) to minimize adverse visual impacts of telecommunication towers and facilities through design, siting, landscaping, and innovative camouflaging techniques;
- d) to promote and encourage shared use and collocation of telecommunication towers and antenna support structures;
- e) to avoid damage to adjacent properties caused by telecommunication towers and facilities by ensuring that those structures are soundly and carefully designed, constructed, modified, maintained and promptly removed when no longer used or when determined to be structurally unsound;
- f) to ensure that telecommunication towers and facilities are compatible with surrounding land uses; and
- g) to facilitate the provision of wireless telecommunications services to the residents and businesses of the city in an orderly fashion.

1.02. Definitions. For purposes of this section the following terms have the meanings given them, except where the context clearly indicates a different meaning:

Subd. 1. “Antenna” means any device which is designed to transmit or receive any electromagnetic, microwave, radio, television, or other frequency energy waves, of any type, for any purpose, and which does not exceed 10 feet in height. Any such device which exceeds 10 feet in height shall be deemed a “tower” as used herein.

Subd. 2. “Antenna support structure” means a building, water tower, or other structure, other than a telecommunications tower, which can be used for location of telecommunications facilities.

Subd. 3. “Applicant” means a person who applies for a permit to develop, construct, build modify or erect a tower or antenna under this section.

Subd. 4. “Application” means the process by which the owner of a plot of land within the city or other person submits a request to develop, construct, build, modify or erect a tower or antenna upon that land.

Subd. 5. “Engineer” means an engineer licensed by the state of Minnesota.

Subd. 6. “Person” means any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Subd. 7. “Stealth” means design features that blend a structure into the surrounding environment; examples of stealth facilities include, without limitation, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunications towers designed to appear other than as a tower, such as light poles, power poles, and trees or other vertical structures as they normally appear in their existing environments.

Subd. 8. “Telecommunications facilities” means cables, wires, lines, wave guides, antennas or any other equipment or facilities associated with the transmission or reception of telecommunications located or installed on or adjacent to a tower or antenna support structure. The term does not include:

- a) a satellite earth station antenna two meters in diameter or less located in an industrial or commercial district;
- b) a satellite earth station antenna one meter or less in diameter, wherever located; or
- c) a tower.

Subd. 9. “Telecommunications tower” or “tower” means a self-supporting lattice, guyed, or monopole structure constructed from grade that supports telecommunications facilities.

1.03. Development of towers; approvals required.

Subd. 1. General construction prohibition. Towers may not be constructed in any zoning district unless such use is a conditional use in the zoning district in which construction is proposed.

Subd. 2. Conditional use permits required. Towers may not be constructed in any zoning district unless a conditional use permit has been issued by the city council.

Subd. 3. Building permit required. Towers may not be constructed in any zoning district unless a building permit has been issued by the building official.

Subd. 4. City property. The city may authorize the use of city property for towers in accordance with the procedures of this code. The city has no obligation to allow the use of city property for this purpose.

Subd. 5. Zoning districts. A tower is not a permitted use in any zoning district. A tower is a conditional use in industrial districts and on city property.

1.04. Application process.

Subd. 1. A person desiring to construct a tower must submit an application for a building permit and a conditional use permit, to the zoning administrator.

Subd. 2. An application to develop a tower must include:

- a) name, address, and telephone number of the applicant;
- b) name, address, and telephone numbers of the owners of the property on which the tower is proposed to be located;
- c) legal description of the parcel on which the tower is proposed to be located;
- d) written consent of the property owner(s) to the application;
- e) a scaled site plan indicating the location, type and height of the proposed tower, the existing land uses and zoning of the subject parcel, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, drawings of the proposed tower showing elevation and other structures, topography, parking, and depicting the proposed tower design;
- f) a landscape plan showing specific landscape materials, method of fencing, and finished color and, if applicable, the method of camouflage and lighting;
- g) documentation such as coverage maps showing the need for a tower at the proposed site in order to close a gap in the applicant's wireless telecommunications service, or

a gap in the service provided by a person intending to place telecommunications facilities on the tower;

- h) an inventory of existing towers, antennas, or sites approved for towers or antennas, that are either within the city or are sited in a location from which the applicant could provide service within the city, including specific information about the location, height and design of each tower and documentation showing that such existing facilities are unavailable or unsuitable to meet the applicant's need for a tower;
- i) separation distance of the proposed tower from the other towers described in the inventory of existing sites;
- j) a structural engineering report certifying the ability of the tower to accommodate co-location of additional wireless service provider facilities and a statement by the applicant regarding accommodation for co-location of additional antennas for future users;
- k) the setback distance between the proposed tower and the nearest platted residential property, and unplatted residentially zoned properties;
- l) proof that all necessary consents or approvals have been applied for from appropriate federal, state or other local agencies;
- m) an application fee established from time to time by resolution of the city council. In the event the city elects to consult with its attorney or a radio frequency (RF) engineer in review of the application, the applicant shall be required to fully reimburse the city for all such expenses;
- n) other information deemed by the zoning administrator to be necessary;

1.05. Performance standards.

Subd. 1. Colocation capability. A new tower may not be built, constructed or erected in the city unless the tower is capable of supporting additional telecommunications facilities other than what the applicant proposes.

Subd. 2. Setback requirements. A tower must comply with the following setback requirements:

- a) Setback requirements for towers are measured from the base of the tower to the property line of the parcel on which it is located.
- b) Towers shall have a minimum setback from any property line equal to the height of the tower plus 10 feet, unless otherwise provided in this section.

- c) A tower located next to a residential zone shall have a setback equaling the height of the tower plus 100 feet.
- d) The minimum spacing between tower locations is one mile.
- e) A tower setback may be reduced by variance to allow for the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device or similar structure.

1.06. Engineer certification. Towers must be designed and certified by an engineer to be structurally sound and in conformance with the Uniform Building Code, and any other standards set forth in this code.

1.07. Tower design. A tower shall be designed to ensure that visual intrusiveness and impacts on nearby properties is mitigated to the greatest extent feasible.

Subd. 1. Height Restriction. A tower may not exceed the lesser of 195 feet in height or the minimum height necessary to provide adequate coverage in the city by the provider of wireless service. Measurement of tower height must include the tower structure itself, the base pad, and any telecommunications facilities attached thereto. Tower height is measured from grade.

Subd. 2. Lighting. Towers may not be artificially lighted except as required by the Federal Aviation Administration. If so required, lighting shall be of a type, color and intensity so as to minimize visual intrusiveness, particularly at night.

Subd. 3. Exterior finish. Towers not requiring Federal Aviation Administration painting or marking must have an exterior finish as approved in the site plan.

Subd. 4. Fencing. Fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities must be constructed as approved in the site plan.

Subd. 5. Landscaping. Landscaping on parcels containing towers, antenna support structures or telecommunications facilities must be in accordance with landscaping requirements as approved in the site plan. Utility buildings and structures accessory to a tower must be architecturally designed to blend in with the surrounding environment and to meet such setback requirements as are compatible with the actual placement of the tower. Ground mounted equipment must be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood.

Subd. 6. Accessory buildings and equipment. No more than one accessory building is permitted per tower. Accessory buildings may be no more than 200 square feet in size.

Subd. 7. Security. Towers must be reasonably posted and secured to protect against trespass. All signs must comply with applicable sign regulations.

Subd. 8. Design. Towers must be of stealth design as approved in the site plan unless the city determines that such design is infeasible due to the lack of vertical structures in the vicinity of the proposed site.

Subd. 9. Signs and advertising. The use of any portion of a tower for signs other than warning or equipment information is prohibited.

Subd. 10. Types of towers. Towers must be self-supporting without the use of guys, wires, cables, beams or other means.

Subd. 11. Tower materials. All metal towers shall be constructed of, or treated with, corrosion-resistant material.

Subd. 12. Equipment housing. Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated as to be screened from view by landscaping. All support structures shall be reasonably protected against climbing.

1.08. Non-tower facilities. Telecommunications facilities are permitted only as follows:

Subd. 1. Telecommunications facilities are a conditional accessory use in the industrial districts and city property, provided that the owner of such telecommunications facilities, by written certification to the building official, establishes the following facts at the time plans are submitted for a building permit:

- a) that the height from grade of the telecommunications facilities and antennae support structure does not exceed the maximum height from grade of the antenna support structure by more than 20 feet;
- b) that the antenna support structure and telecommunications facilities comply with the Uniform Building Code; and
- c) that telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof; such antennas may not protrude more than six inches from the side of the antenna support structure.

Subd. 2. Notwithstanding anything to the contrary contained in this section, telecommunications facilities are a permitted accessory use on antenna support structures owned or otherwise under the physical control of the city, a school district, or the state or federal government provided a conditional use permit has been issued by the city council and provided further that the owner of such a telecommunications facility, by written certification to the building official, establishes the following facts at the time plans are submitted for a building permit:

- a) that the height from grade of the telecommunications facilities and antennae support structure does not exceed the maximum height from grade of the antenna support structure by more than 20 feet;
- b) that the antenna support structure and telecommunications facilities comply with the Uniform Building Code; and
- c) that telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof; such antennas may not protrude more than six inches from the side of the antenna support structure.

1.09. Removal of towers or telecommunication facilities. Abandoned or unused towers and associated above-ground facilities must be removed within 90 days of the cessation of operations of the telecommunications facility at the site unless an extension is approved by the city council. Any tower and associated telecommunications facilities that are not removed within 90 days of the cessation of operations at a site are declared to be public nuisances and may be removed by the city and the costs of removal assessed against the property pursuant to state law and the code. The conditional use permit shall establish an amount to be posted by bond, letter of credit, cash or equivalent by the applicant that will cover the projected cost of removal of towers or telecommunications facilities in the event of abandonment.

1.10. Additional requirements.

Subd. 1. Structural inspections. The city may conduct inspections at any time, upon reasonable notice to the property owner and the tower owner to inspect the tower for the purpose of determining if it complies with the Uniform Building Code and other construction standards provided by the city code, federal and state law. The City's expense related to such inspections will be borne by the tower owner or property owner. Based upon the results of an inspection, the building official may require repair, modification or removal of a tower.

Subd. 2. Radiation Emission Inspections. The owner of a telecommunications facility shall provide the City with current, technical evidence of compliance with FCC radiation emission requirements at the City's reasonable request.

Subd. 3. Maintenance. Towers and telecommunication facilities must be maintained in accordance with the following provisions:

- a) Tower owners must employ ordinary and reasonable care in construction and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public.
- b) Tower owners must install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in compliance with the requirements of

the National Electric Safety Code and all Federal Communications Commission, state, and local regulations, and in such a manner that they will not interfere with the use of other property.

- c) Towers, telecommunications facilities, and antenna support structures must be kept and maintained in good condition, order, and repair.
- d) Maintenance or construction on a tower, telecommunications facilities or antenna support structure must be performed by qualified maintenance and construction personnel.
- e) All tenants on towers must comply with radio frequency emissions standards of the Federal Communications Commission.
- f) If the use of a tower is discontinued by the tower owner, the tower owner must provide written notice to the city of its intent to discontinue use and the date when the use will be discontinued.

1.11. Failure to comply; permit revocation.

Subd. 1. If the permittee fails to comply with any provision of the city code, federal or state law or the conditional use permit requirements, the city may impose penalties for noncompliance, or it may revoke the permit in accordance with the following provisions.

Subd. 2. Except as provided in subdivision 3 below, a permit revocation shall be preceded by written notice to the permittee of the alleged violation(s), the opportunity to cure the violation(s) during a period not to exceed 30 days following receipt of the written notice and a hearing before the city council within 15 days after receiving written notice of the hearing. The hearing shall provide the permittee with an opportunity to show cause as to why the permit should not be revoked.

Subd. 3. If the city finds that exigent circumstances exists requiring immediate permit revocation, the city may revoke the permit and shall provide a post-revocation hearing at least 15 days after permittee's receipt of written notice of the hearing.

Subd. 4. Any decision to revoke shall be in writing and supported by substantial evidence contained in a written record.

1.12. No permits required. No permits are required for the following:

Subd. 1. Household television antennas extending less than 15 feet above the highest point of a residential structure.

Subd. 2. Satellite dish receiving antennas two meters or less in diameter.

Subd. 3. Adjustment, repair or replacement of the elements of an antenna, provided that such work does not constitute a clear safety hazard.

Subd. 4. Antennas and antenna support structures used by the city for city purposes.

Subd. 5. Emergency or routine repairs, reconstruction, or routine maintenance of previously approved facilities, or replacement of transmitters, antennas, or other components or previously approved facilities which do not create a significant change in visual impact or an increase in radio frequency emission levels, and provided that such work does not constitute a clear safety hazard.

Subd. 6. Two-way communication transmitters used on a temporary basis by a “911” emergency services, including fire, police and emergency aid or ambulance service.

Subd. 7. Radio transceivers normally hand-held or installed in moving vehicles, such as automobiles, watercraft, or aircraft. This includes cellular phones.

1.13. Right-of-way. Except as approved by the city, no part of any telecommunications tower or telecommunications facilities, nor any lines, cable, equipment, wires or braces shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk or property line.

1.14. Insurance. The applicant shall provide evidence satisfactory to the city that its tower and telecommunication facilities thereon are adequately insured for personal injury and property damage liability. Upon request, the holder of a conditional use permit issued under this chapter shall submit to the city clerk a photocopy of a certificate of insurance showing that the tower or antenna facility is insured for that calendar year.

1.15. Variances.

Subd. 1. The applicant may apply for a variance from the provisions of this section to the extent expressly indicated herein.

Subd. 2. A variance may be granted if the applicant shows by clear and convincing evidence that it or its tenants cannot meet reasonable service quality needs of end users in the city without a variance from the requirements of this section.

Subd. 3. If the applicant makes the showing required by subdivision 2 the city council must consider the following additional factors in determining whether to grant a variance:

- a) Whether there are exceptional or extraordinary circumstances that apply to the property because of lot size or shape, or topography, or other circumstances over which the owners of the property have no control;
- b) Whether special conditions or circumstances exist that were not created by the applicant or the owner of the property or their predecessors;

- c) Whether the variance would be detrimental to the public or to the owners of other property in the vicinity; and
- d) Whether the variance requested is the minimum variance that would alleviate the hardship.

Subd. 4. A variance will be granted only in instances where the strict enforcement of the requirements of this section would cause undue hardship. Economic consideration alone will not constitute an undue hardship if reasonable use of the property exists under the terms of this section.

1.16 Penalties.

Any person violating any provision of this Ordinance is guilty of a misdemeanor and upon conviction shall be subject to the misdemeanor penalties set forth in Minnesota Statute Section 609.02, Subdivision 3, or any laws amending or repealing such law.

1.17. Severability. Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid.

This Ordinance shall become effective immediately upon publication.

For City of Arlington

/s/ David Czech
By David Czech
It's Mayor

/s/ David L. Krueger
By David L. Krueger
It's City Administrator

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