

CHAPTER 10

COMMUNICATIONS REGULATIONS

ARTICLE I – WIRELESS COMMUNICATION FACILITIES

10-1-1 STATEMENT OF INTENT. The purpose of this Chapter is to establish general guidelines for the siting of Wireless Communication Facilities (WCFs) and to encourage the orderly development of WCFs for the benefit of the community and to protect the character of residential neighborhoods. In the interest of protecting the public's health, safety and general welfare, and to advance sound planning principles, it is important that the City encourage the delivery of new wireless technologies throughout the City while controlling the proliferation of transmission towers. The objectives of the Wireless Communication Facilities Siting Regulations and Development Standards are the following:

- (A) To protect residential areas from the uncontrolled development of WCFs by requiring reasonable siting conditions;
- (B) To encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas;
- (C) To provide a range of locations for WCFs throughout the City's zoning jurisdiction;
- (D) To promote the use of suitable land for the location of wireless antennas, towers and/or other WCFs;
- (E) To encourage collocation and site sharing of existing and new WCFs;
- (F) To encourage the location of WCFs onto existing structures to reduce the number of new communication towers needed within the City's zoning jurisdiction;
- (G) To regulate the type of tower facility constructed when towers are permitted;
- (H) To enhance the ability of providers of wireless communications services to provide such services to the community; and,
- (I) To establish development standards to address the siting of WCFs which are consistent with the requirements of the Federal Telecommunications Act of 1996 and are in the best interest of the future of the City.

In furtherance of these objectives, the City shall give due consideration to the City's Comprehensive Plan, Zoning Map, existing land use and the location of environmentally sensitive areas in approving sites for the location of WCFs.

10-1-2 DEFINITIONS. Words and phrases used in this Chapter shall have the common meaning unless defined below or in Section 15-2A-3.

"Antenna Array": One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The Antenna Array does not include the Support Structure defined below.

"Attached Wireless Communication Facility (Attached WCF)": An Antenna Array that is attached to an existing building or structure, which structures shall include but not be limited to utility poles, signs, or water towers, with any accompanying pole or device which attaches the Antenna Array to the structure, and associated connection cables and an Equipment Facility.

"Collocation/Site Sharing": Use of a common WCF, or common site by more than one wireless communication license holder, or by one wireless communication license holder for more than one type of communications technology and/or placement of an Antenna Array on a structure.

"Equipment Facility": Any structure used to contain ancillary equipment for a WCF which includes cabinets, shelters, a built out of an existing structure, pedestals and other similar structures.

"FAA": Federal Aviation Administration.

"FCC": Federal Communications Commission.

"FTA": Federal Telecommunications Act of 1996.

"Height": When referring to a WCF, height shall mean the vertical distance measured from the base of the tower to the highest point on the WCF, excluding the Antenna Array.

"Setback": The required distance from the property line of the parcel on which the WCF is located to the base of the Support Structure and Equipment Facility where applicable, or in the case of the guy-wire supports, the guy anchors.

"Support Structure": A structure designed and constructed specifically to support an Antenna Array, and may include a monopole, self-supporting (lattice) tower, guy-wire-support tower and other similar structures.

"Temporary Wireless Communication Facility (Temporary WCF)": A WCF to be placed in use for **sixty (60)** or fewer days.

"Tower and/or Antenna Use Permit (TAP)": A permit issued by the City specifically for location, construction, use and compliance with the development standards of a proposed WCF.

"Wireless Communications": Any personal, wireless services as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that in the future may be developed.

"Wireless Communication Facility (WCF)": Any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables, Equipment Facility and a Support Structure to achieve the necessary elevation.

10-1-3 APPLICABILITY.

(A) **New Wireless Communication Facility.** No person, firm or corporation shall install or construct any new WCF, unless and until, a Tower and/or Antenna Use Permit (TAP) has been issued by the Development Services Director pursuant to the requirements of this Chapter.

(B) **Pre-Existing Wireless Communication Facility.** WCFs which exist prior to the effective date of this Chapter shall not be required to meet the requirements of this Chapter, unless expansion or additions are requested. Alterations to a Support Structure, or the addition of Antenna Arrays to a structure, must meet the requirements of this Chapter and may be compared after appropriate permits are issued.

(C) **Exemptions.** The provisions of this Chapter do not apply to a single ground or building mounted receive-only radio or television antenna used for residential purposes; a ground or building mounted citizens band radio antenna, if the height does not exceed **thirty-five (35) feet**; licensed amateur (ham) radio facilities, if the height does not exceed **thirty-five (35) feet**; and satellite dish antennas for residential or commercial purposes when used as an accessory use of the property.

10-1-4 SHARED FACILITIES AND COLLOCATION POLICY. All new Wireless Communication Facilities shall be engineered, designed and constructed to be capable of sharing the facility with other applicants, to collocate with other existing WCFs and to accommodate the future collocation of other WCFs. A Tower and/or Antenna Use Permit (TAP) shall not be issued until the

applicant proposing a new WCF shall demonstrate that it has made, in reasonable good faith, an attempt to locate its WCF onto an existing structure. Competitive conflict and financial burden alone are not deemed to be adequate reasons against collocation.

10-1-5 INVENTORY OF EXISTING SITES. Upon adoption of this Chapter, all wireless communication service providers operating in the City are required to register with the City. Registering service providers shall provide to the Development Services Department, an inventory of existing WCF towers and/or antennas that are within the zoning jurisdiction of the City, which includes all areas in the City limits and within **one and one-half (1 ½) miles** of the border thereof; including specific information about the location, height and design of each tower.

10-1-6 PREFERENCE LOCATIONS FOR WIRELESS COMMUNICATION FACILITIES. The order of preference for locating new wireless communication facilities within the City's zoning jurisdiction shall be as follows:

(A) Locating Antenna Attachments to existing Support Structures or to existing buildings or other structures which shall include but not be limited to utility poles, signs and water towers. All Antenna Attachments shall be permitted by administrative approval subject to the Development Standards of **Section 10-1-10** of this Chapter.

- (B) Locating new Support Structures on land that meet the following requirements:
- (1) The site is located on property zoned A-1, A-2, A-3, A-4 and I-1, I-2, I-3, and I-4.
 - (2) The site has a setback distance of **five hundred (500) feet** from residentially zoned property (R-1, R-2, R-3, R-4, R-5, P-MH, M-1, M-2).
 - (3) The site has a minimum spacing requirement distance of **one thousand (1,000) feet** from any other transmission tower.

Support Structures on these lands shall be permitted by administrative approval subject to the Development Standards of **Section 10-1-10** of this Chapter.

(C) Locating new Support Structures on any other lands not meeting the requirement in (B) above and within the City's zoning jurisdiction. Support Structures on these lands shall only be permitted by means of approval of a Special Use and subject to the Development Standards of **Section 10-1-10** of this Chapter. When applying for a Special Use, the applicant shall provide the City with adequate information to establish that no lands included in (A) or (B) above can be made suitable for the applicant's proposed WCFs in accordance with **Section 10-1-4** of this Chapter.

10-1-7 REVIEW PROCEDURES.

(A) **Permitted Wireless Communications Facilities.** Attached WCFs, with or without new building construction, that meet the Development Standards prescribed in **Section 10-1-10** of this Chapter, may be permitted by administrative review. All WCFs with Support Structures that are located on land in accordance with the requirements prescribed in **Section 10-1-6(B)** of this Chapter and meet the Development Standards prescribed in **Section 10-1-10** of this Chapter may be permitted by administrative review.

(B) **Wireless Communications Facilities Permitted by Special Use.** All other proposed WCFs not included in (A) above shall be subject to the Special Use approval process.

(C) **Temporary Wireless Communications Facilities.** Temporary WCFs may be permitted by administrative approval in the case of an emergency (e.g., storm damage to an existing tower or other circumstances resulting in the interruption of existing service) for a term not to exceed **sixty (60) days**. One granted, a temporary WCF permit may be extended for an additional **sixty (60) days** upon evidence of need by the applicant. Upon termination of the administrative approval for the temporary WCF, the temporary WCF shall be removed at the owner's expense.

(D) **Wireless Communication Facilities Requiring a Certificate of Appropriateness.** Any Wireless Communication Facilities, regardless of type, to be located within an established National Register or Benton Register Historic District or Landmark, shall be subject to review by the Preservation Commission in accordance with Section 15-2D.LF, the Preservation District section of the Zoning Code.

10-1-8 REQUIRED SUBMITTALS FOR TOWER AND/OR ANTENNA USE PERMIT (TAP).

(A) All requests for a WCF, regardless of type, shall submit an application for a Tower and/or Antenna Use Permit (TAP) on forms prescribed by the City and attach the following documents and exhibits:

- (1) Scaled site plan.
- (2) Scaled elevation view.
- (3) Color rendering and/or photo simulation(s) of the proposed tower with its antenna, all facilities and required landscaping viewed from the nearest adjacent street or streets.
- (4) Copy of the FCC of each proposed user of the tower.
- (5) Other supporting drawings, calculations and other documentation, signed and sealed by appropriate Illinois licensed professionals, showing the location and dimensions of all improvements, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses, and other information deemed by the Development Services Director to be necessary to assess compliance with this Chapter.
- (6) Copy of a Collocation Agreement wherein the applicant acknowledges that a condition to granting any Tower and/or Antenna Use Permit is the applicant's ongoing commitment to make available and reasonably market collocation sites on each new tower.
- (7) Evidence of compliance with **Section 10-1-4**, Shared Facilities and Collocation Policy, and **Section 10-1-5**, Inventory of Existing Sites, of this Chapter.

10-1-9 APPROVAL PROCESS.

(A) **Administrative Review Procedures.** The following administrative review process shall apply to all WCF applications eligible for administrative review.

- (1) **Review Authority.** Review of proposed WCFs under this Section shall be conducted by the Development Services Director, or his/her designee, upon filing a TAP application. The Development Services Director may waive or amend specific requirements in **Section 10-1-8** for the submittal of a TAP application, if it is determined by the Development Services Director that the goals of this Chapter would be better served thereby.
- (2) **Review Criteria.** Each TAP application shall be reviewed for compliance with the Development Standards specified in **Section 10-1-10** of this Chapter.
- (3) **Timing of Decision.** The Development Services Director shall render a decision on the TAP application by written response to the applicant within **twenty (20) business days** after receipt of the complete application, except that an extension may be agreed upon by the applicant.
- (4) **Application Approval.** If the TAP application is in compliance with the Development Standards in **Section 10-1-10**, and otherwise meets the

requirements of this Chapter, the Development Services Director shall issue a TAP.

- (5) **Application Denial/Appeal Process.** If administrative approval is denied by the Development Services Director, the reason for denial must be made to the applicant in writing. The applicant may appeal the denial to the Mayor. The Mayor shall hear the appeal within **ten (10) days** of receiving a written request from the applicant. The Mayor shall submit his/her written determination on the appeal to the applicant and to the **Development Services Director** within **five (5) working days** of the conclusion of the appeal hearing. If administrative approval is denied by the Mayor, the applicant may appeal the denial to the City Council for the final determination in approving or denying the TAP application.

(B) **Special Use Review Procedure.** The following shall apply to all TAP applications requiring submission to the Planning Commission for review in accordance with Section 15-2H, the Special Use section of the Zoning Code. The Planning Commission shall consider the following in reaching a decision for recommendation to the City Council.

- (1) **Review Criteria.** Each TAP application shall be reviewed for compliance with the Development Standards set forth in **Section 10-1-10** of this Chapter.
- (2) **Tower Siting Conditions.** The Planning Commission may recommend to the City Council that conditions and restrictions be imposed on the application, or on the premises benefitted by the TAP, as it deems necessary to reduce or minimize any adverse effects and to enhance the compatibility of the WCF with the surrounding property, in accordance with the purposes and intent of this Chapter.
- (3) **Factors in Granting Special Use Permit for Towers.** In addition to any standards for consideration of Special Use permit applications pursuant to Section 15-2H-2 of the Zoning Code, the Planning Commission and City Council shall consider the following factors when reviewing TAP applications for new towers:
- (a) Height of the proposed tower;
 - (b) Proximity of the tower to residential structures and residential district boundaries;
 - (c) Nature of uses on adjacent and nearby properties;
 - (d) Surrounding topography;
 - (e) Surrounding tree coverage and foliage; and
 - (f) Proposed ingress and egress.
- (4) **Availability of Suitable Existing Towers, Other Structures or Alternative Technology.** No new Support Structure shall be permitted unless the applicant submits a written brief demonstrating that no existing tower, structure, or alternative technology that does not require the use of towers or structures, can accommodate the applicant's proposed WCF. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed WCF shall be prepared by a qualified and licensed Illinois professional engineer and may consist of one or more of the following:
- (a) Existing towers or structures are not located within a reasonable geographic area which meet the applicant's engineering requirements.
 - (b) Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.
 - (c) Existing towers or structures cannot be altered to provide sufficient structural strength to support applicant's proposed antenna and related equipment.

- (d) 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.
- (e) 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 based upon market information provided to the Development Services Director. Costs exceeding new tower development are presumed to be unreasonable.
- (f) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- (g) The applicant demonstrates that an alternative technology that does not require the use of towers or structures is unsuitable.
- (h) Applicants are required to demonstrate by providing proof of certified mailings or other reasonable means:
 - (i) that they have contacted the owners of reasonably suitable structures within a **one thousand (1,000) foot** radius of the proposed site, and which from a location standpoint, could provide part of a network for transmission of signals;
 - (ii) have asked for permission to install the antenna on those structures; and
 - (iii) were denied for reasons other than economic feasibility.

10-1-10 DEVELOPMENT STANDARDS. Development Standards for Wireless Communications Facilities shall include the following standards:

(A) **Height Standards.** The following height standards shall apply to all WCF installations:

- (1) WCFs in the RR, R-1, R-1-D, R-2, R-2.4, R-2.8, R1viH, MHS, and PAR Districts shall be restricted to **thirty (30) feet** in height.
- (2) WCFs in the R-3, PUD, NB, PA, SB, BPL, BWA, BPR, BI, and BRD Districts shall be restricted to **one hundred fifty (150) feet** in height. In addition, any WCF with a Support Structure in these districts shall be engineered and constructed to accommodate at least **three (3)** Antenna Array.
- (3) WCFs in the F, AG, LI, GI, and II Districts shall have no height restriction. All WCFs with a Support Structure up to a height of **one hundred fifty (150) feet** shall be engineered and constructed to accommodate at least **three (3)** Antenna Arrays. All WCFs with a Support Structure of greater than **one hundred fifty (150) feet** shall be engineered and constructed to accommodate at least **four (4)** Antenna Arrays.

(B) **Setback Standards.** The following setback standards shall apply to all WCF installations:

- (1) All Support Structures shall be constructed to comply with the setback provisions of the zoning district in which they are located, or as may be required by the site distance or spacing requirements prescribed in **Section 10-1-6(B)** of this Chapter, but in no instance shall any Support Structure be less than **ten (10) feet** from any lot line.
- (2) Attached WCFs are exempt from any setback standard. An Antenna Array may extend up to **five (5) feet** horizontally beyond the edge of an attachment structure so long as the Antenna Array does not encroach upon an adjoining parcel.

- (3) Equipment Facilities and guy anchors, if permitted, must satisfy the minimum setback requirements of the zoning district in which they are located.

(C) **Landscaping.** The following landscaping requirements shall be maintained by the applicant and shall apply to all new WCF installations:

- (1) Support Structures and Attached WCFs with new building construction shall be landscaped around the perimeter of the security fencing by a row of evergreen trees or evergreen shrubs capable of creating a continuous hedge and obtaining a height of at least **ten (10) feet**. Trees shall be a minimum of **1.5 inch caliper**, or shrubs a minimum of **twenty-four (24) inches** tall, at the time of planting.
- (2) **Land Form Preservation.** Existing mature tree growth and natural land form on the site shall be preserved to the extent feasible, provided that vegetation that causes interference with the antennas or inhibits access to the Equipment Facility may be trimmed or removed.
- (3) **Existing Vegetation.** Existing vegetation on a WCF site may be used in lieu of required landscaping where approved by the Development Services Director.
- (4) **Minimum Site Disturbance.** Grading for the new WCF shall be limited only to the area necessary for the new facility.

(D) **Aesthetics, Materials and Colors.** The following standards shall apply to all WCFs installations:

- (1) Support Structures shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, or such shades as are appropriate and compatible with the surrounding environment, so as to reduce visual obtrusiveness.
- (2) Antenna Array attachments and supporting electrical and mechanical equipment shall be of a color that is identical to, or closely compatible with, the color of the attachment structure so as to make the Antenna Array and related equipment as visually unobtrusive as possible.

(E) **Security Fencing.** WCFs with Support Structures shall be enclosed by an opaque security fence not less than **six (6) feet** in height. Security features may be incorporated into the buffer, landscaping and screening requirements for the site. Nothing herein shall prevent security fencing that is necessary to meet requirements of State or Federal agencies.

(F) **Lighting.** The following lighting requirements shall apply to all WCF installations. WCFs shall not be artificially illuminated, directly or indirectly, except for:

- (1) Security and safety lighting of equipment buildings, if such lighting is appropriately down shielded to keep light within the boundaries of the site; and,
- (2) Such illumination of the WCF as may be required by the FAA, or other applicable authority, installed in a manner to minimize impacts on adjacent residences.

(G) **Signage.** WCFs shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature, except for a message containing provider identification and emergency telephone numbers and other information as may be required by local, state or federal regulations governing WCFs.

(H) **Radio Frequency Emissions/Sound.** The following radio frequency emissions standards shall apply to all WCF installations:

- (1) **Radio Frequency Impact.** Applicants for WCFs shall be required to provide information with the application on the measurement of the effective radiated power of the facility to document that the facility complies with all applicable FCC standards.
- (2) **Sound Prohibited.** No unusual sound emissions such as alarms, bells, buzzers or the like are permitted.

(I) **Structural Integrity.** WCFs with Support Structures shall be constructed to the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Support Structures," (or equivalent), as it may be updated and amended. Each Support Structure shall be capable of supporting multiple Antenna Arrays.

(J) **Collocation Support Structure Design.** To encourage Collocation of WCFs, all WCFs shall be designed to accommodate multiple Antenna Arrays in accordance with the Development Standards prescribed in Section 10-1-1 OA (Height Standards) of this Chapter.

(K) **Collocation Agreement.** All applicants for WCFs are required to submit a Collocation Agreement with the Tower and/or Antenna Use Permit (TAP) application agreeing to allow and reasonably market collocation opportunities to other WCF users. The agreement shall include the applicant's policy regarding the collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged to other providers. The Collocation Agreement shall be considered a condition of issuance of a TAP. A TAP shall not be issued unless the applicant complies with the Shared Facilities and Collocation Policy outlined in **Section 10-1-4** of this Chapter.

(L) **Other Application Regulations.**

(1) **State or Federal Requirements.** All towers must meet or exceed current standards and regulations of the FAA, 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 Chapter 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.

(2) **Building Code Requirements.** Construction of all WCFs, within the corporate limits of the City, shall comply with the requirements of the Benton Building Codes and permitting process in addition to the requirements of this Chapter.

10-1-11 NONCONFORMING WIRELESS COMMUNICATION FACILITIES. WCFs in existence on the date of the adoption of this Chapter, which do not comply with requirements of this Chapter, shall be considered a Nonconforming Wireless Communications Facility and are subject to the following provisions:

(A) **Expansion.** Nonconforming WCFs may continue in use for the purpose now used, but may not be expanded without complying with this Chapter, except as further provided in this Section.

(B) **Additions.** Nonconforming WCFs may add additional antennas (belonging to the same provider or other providers) subject to administrative review under this Chapter.

(C) **Repairs or Reconstruction.** Nonconforming WCFs which become damaged due to any reason or cause, may be repaired and restored to its former use, location, and physical dimensions subject to the provisions of this Chapter. Provided, however, that if the damage to the WCF exceeds **fifty percent (50%)** of the replacement cost, said WCF may only be reconstructed or repaired in compliance with this Chapter.

(D) Any WCF not in use as a WCF for **twelve (12) months** shall be deemed abandoned and all rights as a nonconforming use shall cease.

10-1-12 REMOVAL OF ABANDONED WIRELESS COMMUNICATION FACILITIES. Any WCF that is not operated for a continuous period of **twelve (12) months** shall be considered abandoned, and the City, at its election, may require the WCF owner to remove the WCF within **ninety**

(90) days after notice from the City to remove the WCF. If there are **two (2)** or more users of a single WCF, this provision shall not become effective until all provide3rs cease to use the wireless communication. If the owner of an abandoned WCF cannot be located, or is no longer in business, the requirements of this Section shall be the responsibility of the landowner on whose property the WCF is located.

10-1-13 REVOCATION OF TOWER AND ANTENNA USE PERMITS. Any Tower and/or Antenna Use Permit (TAP) issued pursuant to this Chapter may be revoked after a hearing as provided hereinafter. If the Development Services Director finds that any permit holder has violated any provision of this Chapter, or the conditions, restrictions or additional Development Standards of an approved Special Use; or has failed to make, in reasonable good faith, efforts to provide or seek collocation, the Development Services Director shall notify the permit holder in writing that the TAP is revocable due to the permit holder's noncompliance with the conditions of the permit, and the Development Services Director shall convene a meeting with the permit holder no later than **thirty (30) days** from the date of the letter. The Development Services Director may require the permit holder to correct the violation within a reasonable amount of time or the Director may recommend to the Mayor that the TAP be revoked.

The Mayor shall notify the permit holder, in writing, of the specific areas of noncompliance and specify the date by which such deficiencies must be corrected. The time for correction of the deficiencies shall not exceed **sixty (60) days**. The permit holder shall provide the Mayor with evidence that the required corrective action has been taken. Should the permit holder fail to correct any deficiencies in the time required, the Mayor shall request that the City Council convene a public hearing to consider revocation of the TAP. The hearing shall be conducted pursuant to notice by publication in a newspaper with general circulation in the City not less than **fifteen (15) days** prior to the hearing. The permit holder may be represented by an attorney and may cross-examine opposing witnesses. Other interested persons may comment. The City Council may impose reasonable restrictions with respect to time and procedure. The proceedings shall be recorded. After the appropriate public hearing, the City Council may revoke the TAP upon such terms and conditions, if any, that the City Council may determine.

(Ord. No. 01-06; 04-23-01)