

CITY OF BUFFALO, IOWA

~~AMENDMENT~~ 361

ORDINANCE #361

An amendment to regulate the placement of communication towers and antennas on city-owned or controlled real estate.

WHEREAS, the City of Buffalo wishes to add requirements for placement of communication towers and antennas in the City of Buffalo to the Municipal Code,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Buffalo, Iowa hereby amends the Buffalo Municipal Code by adding a new Title VII Chapter 4, Article 1, Communication Towers and Antennas, to read as follows:

Chapter 4

COMMUNICATION TOWERS AND ANTENNAS

Sections:

- 7-4.0101 Purpose and general policy.**
- 7-4.0102 Definitions.**
- 7-4.0103 Local regulation and compliance with Telecommunications Act of 1996.**
- 7-4.0104 Lease required.**
- 7-4.0105 Fee required.**
- 7-4.0106 Limit on term.**
- 7-4.0107 Priorities.**
- 7-4.0108 Placement requirements.**
- 7-4.0109 Application process.**
- 7-4.0110 Noise and emission standards.**
- 7-4.0111 Placement of facilities and related lease fees.**
- 7-4.0112 Abandonment.**
- 7-4.0113 Termination.**
- 7-4.0114 Home rule.**
- 7-4.0115 New Technologies.**

7-4.0101 Purpose and general policy. The council finds that in order to ensure public safety and provide efficient delivery of services by the city and others wishing to utilize wireless communication technologies, in order to protect public and private investments, ensure the health, safety and welfare of the population, to provide for the regulation and administration of the orderly location of antenna arrays and towers and to secure the rights of the city to a return on its investment on public property, it is necessary for the city to establish uniform rules and policies. This amendment is to be interpreted in light of these findings for the benefit of the citizens of the City of Buffalo.

7-4.0102 Definitions. As used in this amendment:

1. "Communications tower" shall mean a tower, pole or similar structure which supports a telecommunications antenna operated for commercial purposes above ground in a fixed location, free standing, guyed or on a building.
2. "Telecommunications" shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
3. "Antenna" shall mean a device, dish or array used to transmit or receive telecommunications signals.
4. "Height" of a communication tower is the distance from the base of the tower to the top of the structure.

7-4.0103 Local regulation and compliance with the Telecommunications Act of 1996. The Telecommunications Act of 1996 prohibits the city from establishing policies that discriminate against one or a group of providers in favor of another or another group of providers or potential providers. The following objectives shall be applied consistently to all telecommunications providers that request a location on city property for their communication towers and antennas.

1. To minimize the overall number of towers located in the city, providers may be required to participate in collocation agreements.
2. To ensure that new towers will be safe and blend into their environment, providers will propose designs consistent with site characteristics.
3. To minimize placement of wireless equipment in highly populated areas, residential locations will be considered as a last resort.
4. To assure revenues from site leases of city-owned and -controlled land and structures reflects fair compensation for use of city property and administration of this amendment.

7-4.0104 Lease required. No person or other entity shall use any public property without first obtaining a lease from the city.

7-4.0105 Fee required. No lease for the use of public property shall be granted without requiring the lessee thereof to pay a reasonable and competitively neutral fee for the use of that public property.

7-4.0106 Limit on term. No lease for the use of public property shall be granted for a term of more than 25 years. (Note: City may opt for a shorter term.)

7-4.0107 Priorities. Priority of the use of city-owned land for communication antennas and towers will be given to the following entities in descending order of priority:

1. All functions of the City of Buffalo.
2. Public safety agencies that are not a part of the city, including law enforcement, fire and ambulance services, and private entities with a public safety agreement with the city.
3. Other governmental agencies for uses which are not related to public safety.
4. Entities providing licensed commercial communications services, including cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced

specialized mobilized radio (ESMR), paging and similar services that are marketed to the general public for business and/or personal use.

7-4.0108 Placement requirements. The placement of communications antennas or towers on city-owned property must comply with the following requirements:

1. The antenna or tower will not interfere with the purpose for which the city-owned property is intended.
2. The antenna or tower will have no adverse impact on surrounding private property.
3. The applicant will produce proof of adequate liability insurance for potential damage antennas or towers could reasonably cause to city property and facilities and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The fees shall be established by the city council and shall reflect potential expense and risks to the city and other appropriate factors.
4. The applicant will submit a letter of credit, performance bond, or other security acceptable to the city to cover the cost of antenna or tower removal.
5. The antennas or towers will not interfere with other uses which have a higher priority as discussed in the paragraphs above.
6. Upon reasonable notice, the antennas or towers may be required to be removed at the user's expense.
7. The applicant must reimburse the city for any costs which it incurs because of the presence of the applicant's antenna or tower.
8. The user must obtain all necessary land use approval.
9. The applicant will cooperate with the city's objective to promote collocations and thus limit the number of separate antenna sites requested.

7-4.0109 Application process. All applicants who wish to locate a communications antenna or tower on city-owned or private property must submit to the city building commissioner a completed application accompanied by a fee of \$200.00 and the following documents, if applicable:

1. Documents:
 - A. One copy of typical specifications for proposed structures and antennas, including description of design characteristics and material.
 - B. A site plan drawn to scale showing property lines, tower location, tower height, guy wires and anchors, existing structures, photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscape plan, and existing land uses on adjacent property. A site plan is not required if the antenna is to be mounted on an approved existing structure.
 - C. A current map or update for an existing map on file showing locations of applicant's antennas, facilities, existing towers and proposed towers which are reflected in public records, serving any property within the city.
 - D. A report from a structural engineer showing the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with ANS/EIA/TIA 222, latest revision standards.
 - E. Identification of the owners of all antennas and equipment to be located on the site.
 - F. Written authorization from the site owner for the application.

G. Evidence that a valid FCC license for the proposed activity has been issued.

H. A line of sight analysis showing the potential visual and aesthetic impacts on adjacent residential districts.

I. A written agreement to remove the tower and/or antenna within 180 days after cessation of use.

J. Additional information, as required, to determine that all applicable zoning regulations are met.

K. Any communications facilities located on the roof of an antenna support structure must be set back at least one foot from the edge of the roof of the structure. This setback requirement shall not apply to 1) communications facilities located above the roof of the structure if the facilities are appropriately screened from view through the use of panels, walls, fences or other screening techniques approved by the city, or 2) camouflage antennas that are mounted to the exterior of the antenna support structures below the roof, but do not protrude more than 24 inches from the side of such an antenna support structure.

2. Conditions. Applicant must also show evidence that all of the following conditions which are applicable are met:

A. Applicant must show that the proposed communications tower, antenna or accessory structure will be placed in a reasonably available location that will minimize the visual impact on the surrounding area and allow the facility to function in accordance with minimum standards imposed by applicable communications regulations and applicant's technical design requirements.

B. Applicant must show that a proposed antenna and equipment cannot be accommodated and function as required by applicable regulations and applicant's technical design requirement without unreasonable modifications on any existing structure or tower under the control of the applicant.

C. Applicant for a permit in a residential district must show that the area cannot be adequately served by a facility placed in a non-residential district for valid technical reasons.

D. Prior to consideration of a permit for location on private property which must be acquired, applicant must show that available publicly owned sites, and available privately owned sites occupied by a compatible use, are unsuitable for operation of the facility under applicable communications regulations and applicant's technical design requirements.

E. Applicant must provide the names, addresses and telephone numbers of all owners of other towers or useable antenna support structure within a one-half mile radius of the proposed new tower site, including city-owned property, and written documentation that the applicant 1) made diligent but unsuccessful efforts for a minimum of forty (40) days prior to the submission of the application to install or collocate the applicant's telecommunications facilities on towers or useable antenna support structures owned by the city and other persons located within a one-half mile radius of the proposed tower site, or 2) written technical evidence from an engineer that the proposed tower or facilities cannot be installed or collocated on another person's tower or support structure within a one-half mile radius of the proposed tower and must be located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system.

F. Applicants must show that a new tower is designed to accommodate

additional antenna equal in number to applicant's present and future requirements.

G. Applicant must show that all applicable health, nuisance, noise, fire, building and safety code requirements are met.

H. All towers and communications facilities shall be of camouflage design standards. Examples of camouflage facilities include, but are not limited to, architecturally screened roof, roof-mounted antennas, antennas integrated into architectural elements, telecommunications towers designed to blend into the surrounding environment or to look other than a tower, such as light poles, power poles and trees. At a minimum, all towers not requiring FAA painting or markings shall have an exterior finish which is galvanized or painted dull blue, gray or black.

I. Applicant must show by certificate from a registered engineer that the proposed facility will contain only equipment meeting FCC rules, and must file with the city clerk-financial officer a written indemnification of the municipality and proof of liability insurance or financial ability to respond to claims up to \$1,000,000.00 in the aggregate which may arise from operation of the facility during its life, at no cost to the municipality, in form approved by the city attorney.

J. Land use regulations, visibility, fencing, screening, landscaping, parking, access, lot size, exterior illumination, sign, storage, and all other general zoning district regulations except setback and height, shall apply to the use. Setbacks on all sides shall be a distance equal to the height of the tower. The following height conditions apply:

i. Residential - R-1 Single-family Residence, R-2, Two-family Residence and R-3 General Residence Districts - Free-standing tower with height not exceeding 100 feet is a permitted conditional use: height exceeding 100 feet requires special exception.

ii. Commercial - C-1 General Commercial and C-3 Highway-Oriented Commercial Districts - Free-standing or guyed tower with height not exceeding 180 feet is a permitted conditional use: height exceeding 180 feet requires special exception.

iii. Industrial - I-1 General Industrial District - Free-standing or guyed tower with height not exceeding 360 feet is a permitted conditional use: height exceeding 360 feet requires special exception.

iv. Other - (list districts) Free-standing or guyed tower with height not exceeding 500 feet is a permitted conditional use: height exceeding 500 feet requires special exception.

K. A tower must be a minimum distance equal to one and one-half the height of the tower from property designated historic or architecturally significant, and must be set back from all lot lines distances equal to the district setback requirements or 25% of the tower height, whichever is greater.

All responses to applications for siting of telecommunications towers and facilities shall be in writing and shall be made within thirty (30) days after all application materials are received.

7-4.0110 Noise and emission standards. No equipment shall be operated at towers and telecommunications facilities so as to produce noise in excess of applicable noise standards under WAC 173-60, except during emergencies or periodic routine maintenance which requires the use of a backup generator, where the noise standards may be exceeded temporarily.

The federal Telecommunications Act of 1996 gives the FCC sole jurisdiction to regulate radio frequency emissions. Facilities that meet the FCC standards shall not be conditioned or denied on the basis of emissions impacts. Applicants for tower sites shall be required to provide information on the projected power density of the facility and how this meets FCC standards.

7-4.0111 Placement of facilities and related lease fees. The placement and maintenance of communications antennas or towers on city-owned sites, such as water towers and parks, will be allowed when the following additional requirements are met:

1. Water tower or reservoir sites. The city's water tower and reservoir represent a large public investment in water pressure stabilization and peak capacity reserves. Therefore, its protection is of prime importance. As access to the city's water storage system increases, so does the potential for contamination of the public water supply. For these reasons, the placement of communications towers or antennas on water towers or reservoir sites will be allowed only when the following requirements are met.

A. The applicant must have written approval from the public works director each time access to the facility is desired. This will minimize the risk of contamination to the water supply.

B. There is sufficient room on the structure and/or the grounds to accommodate the applicant's facility.

C. The presence of the facility will not increase the water tower or reservoir maintenance cost to the city.

D. The presence of the facility will not be harmful to the health or safety of the workers maintaining the water tower or reservoir.

E. A fee will be assessed for placing facilities on a city water tower, such fee to be determined by the city council.

2. Parks. The presence of certain communications antennas or towers represents a potential conflict with the purpose of certain city-owned parks and recreational facilities. Towers shall be prohibited in designated conservation areas. Communications antennas or towers will be considered only in the following parks after the recommendation of the park board and approval of the city council:

A. Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use.

B. Commercial recreational areas and major ball fields.

C. Park maintenance facilities.

D. Fee for placing facilities on park property, such fee to be determined by the city council.

7-4.0112 Abandonment. In the event the use of any communications tower has been discontinued for a period of 180 consecutive days, the tower shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the building commissioner, who shall have the right to request documentation and/or affidavits from the communication tower owner/operator regarding the issue of tower usage. Upon such abandonment, the owner/operator of the tower shall have an additional 180 days within which to: 1) reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower, or 2) dismantle and remove the tower. At the earliest, 181

days from the date of abandonment, without reactivating or upon completion of dismantling and removal, any special exception and/or variance approval for the tower shall automatically expire.

7-4.0113 Termination. The city council may terminate any lease if it is determined that any one of the following conditions exist:

1. A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with the existing use.
2. A user's frequency broadcast unreasonably interferes with other users of higher priority, regardless of whether or not this interference was adequately predicted in the technical analysis.
3. A user violates any of the standards in this ordinance or the conditions attached to the city's lease agreement.

Before taking action, the city will provide notice to the user of the intended termination and the reason for it, and provide an opportunity for a hearing before the city council regarding the proposed action. This procedure need not be followed in emergency situations.

7-4.0114 Home rule. This amendment is intended to be and shall be construed as consistent with the reservation of local authority contained in the 25th Amendment to the Iowa Constitution granting cities Home Rule powers. To such end, any limitation on the power of the city contained herein is to be strictly construed and the city reserves to itself the right to exercise all power and authority to regulate and control its local affairs and all ordinances and regulations of the city shall be enforced against the holders of any lease.

7-4.0115 New technologies. Should, within the term of any lease, developments within the field for which the grant was made to the holder of the lease present the opportunity to the holder of the lease to be more effective, efficient and economical through the use of a substance or material other than those for which the lease was originally made, the holder of the lease may petition the city council which, with such requirements or limitations as it deems necessary to protect public health, safety and welfare, may allow the use of such substances under the terms and conditions of the lease.

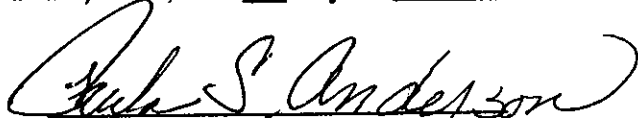
Full force and effect. This ordinance shall be in full force and effect from the date of passage and publication as required by law.

Repealer. This ordinance shall be construed to repeal any prior ordinance inconsistent herewith.

Severability of provisions. If any section, subsection, sentence, clause, phrase, or portion of this ordinance be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as separate, distinct, and independent provision as such holdings shall not be affected the validity of the remaining portion hereof.

Passed by the City Council of the City of Buffalo, Iowa, this 2 day of November, 1998.

Approved and signed by the Mayor of Buffalo, Iowa, this 2 day of November, 1998.


Mayor

Attest: Carol A. Benauer
City Clerk

Date of 1st reading: 11-02-98

Date of 2nd reading: WAIVED

Date of 3rd reading: WAIVED

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