

AN ORDINANCE RELATING TO TELECOMMUNICATIONS FACILITY REGULATIONS

WHEREAS, the Board of Aldermen has determined that it wishes to relocate telecommunication facility regulations from Chapter 23 (Zoning) to Chapter 5 (Buildings) to better facilitate future code amendment applications.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF EUREKA, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1:

Chapter 23, Article XX of the Municipal Code is hereby repealed in its entirety, and a new Chapter 5, Article IX is hereby enacted in lieu thereof which shall read as follows:

**ARTICLE IX
Telecommunications Facilities****Section 5-50. Purposes.**

The purposes of these regulations are to:

- (1) Provide for the appropriate location and development of telecommunications facilities and systems to serve the citizens and businesses of the City of Eureka;
- (2) Minimize adverse visual impacts of antennas and antenna support structures through the careful design, siting, landscape screening and innovative camouflaging techniques;
- (3) Maximize the use of existing and new antenna support structures so as to minimize the need to construct new or additional facilities; and
- (4) Maximize and encourage the use of disguised support structures so as to ensure the architectural integrity of designated areas within the City and the scenic quality of protected natural habitats.

Section 5-51. Definitions.

As used in this Article, the following terms shall have the following meanings:

ANTENNA - Any device or array that transmits and/or receives electromagnetic signals for voice, data or video communication purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications, but excluding satellite earth stations less than six (6) feet in diameter and any receive-only home television antennas.

ANTENNA SUPPORT STRUCTURE - Any structure designed and constructed for the support of antennas, including any tower or disguised support structure, but excluding those support structures under fifty (50) feet in height owned and operated by an amateur radio operator licensed by the FCC. For purposes of this Section, the term "antenna support structure" shall also include any related and necessary cabinet or shelter.

BUILDING - A structure, other than a residence, not constructed primarily for the support of an antenna but which may be utilized for such purpose in accordance with this Section.

CABINET - A casing or console, not to include a shelter, used for the protection and security of communications equipment associated with one (1) or more antennas where direct access to equipment is provided from the exterior and the horizontal dimensions of which do not exceed four (4) feet by six (6) feet.

CO-USE - The location and use of two (2) or more antennas on a single antenna supporting structure or building.

DISGUISED SUPPORT STRUCTURE - Any freestanding, manmade structure designed or used for the support of antennas, the presence of which is camouflaged or concealed as an architectural or natural feature. Such structures may include, but are not limited to, clock towers, campaniles, observation towers, pylon sign structures (excluding advertising), standard outdoor advertising structures, water towers, artificial trees, flagpoles and light standards.

FAA - The Federal Aviation Administration.

FCC - The Federal Communications Commission.

HEIGHT - The vertical distance measured from the base of a structure at ground level to its highest point, including the main structure and all attachments thereto.

SHELTER - A building for the protection and security of communications equipment associated with one (1) or more antennas where access to equipment is gained from the interior of the building. Human occupancy for office or other uses or the storage of other materials and equipment not in direct support of the connected antennas is prohibited.

STANDARD OUTDOOR ADVERTISING STRUCTURES - All signs which advertise products, services or businesses which are not located on the same premises as the sign, including billboards, detached pole signs on separate parcels, wall signs and signs otherwise attached to buildings and/or supported by uprights or braces on the ground.

TOWER - A structure designed for the support of one (1) or more antennas, including guyed towers, self-supporting (lattice) towers or monopoles but not disguised support structures or buildings. The term shall also not include any support structures under fifty (50) feet in height owned and operated by an amateur radio operator licensed by the FCC.

Section 5-52. Permit Required.

A telecommunications facility permit shall be necessary to construct, alter or modify any antenna support structure or to mount any antenna on any building or antenna support structure in any zoning district in the City of Eureka.

Section 5-53. Criteria and Preferences.

The general criteria and preferences for considering the issuance of a telecommunications facility permit shall be as follows:

- (1) *Building Codes and safety standards.* All antennas and antenna support structures shall meet or exceed the standards and regulations contained in applicable State and local Building and Electrical Codes as well as the applicable standards published by the Electronics Industries Association, as amended from time to time.
- (2) *Regulatory compliance.* All antennas and antenna support structures shall meet or exceed current standards and regulations of the FAA, FCC and any other Federal or State agency with the authority to regulate antennas and antenna support structures. Should such standards or regulations be amended, then the owner shall bring devices and structure into compliance with the revised standards or regulations within the time period mandated by the controlling agency.
- (3) *Security.* All antenna and antenna support structures shall be protected from unauthorized access by appropriate security devices. A description of proposed security measures shall be provided as part of any application to install, build or modify antennas or support structures. Additional security measures may be required as a condition of the issuance of any permit as deemed necessary by the Board of Aldermen.
- (4) *Lighting.* Antenna support structures shall not be lighted unless required by the FAA or other Federal or State agency with authority to regulate, in which case a description of the required lighting scheme will be made a part of the application for a telecommunications facility permit.
- (5) *Advertising.* Unless a disguised support structure is in the form of a standard outdoor

advertising structure, the placement of advertising on antenna support structures is prohibited.

(6) *Design.*

- (a) Antenna support structures shall maintain a galvanized steel finish or, subject to the requirements of the City or the FAA, FCC or any applicable Federal or State agency, be painted a neutral color consistent with the natural or built environment of the site.
- (b) Shelters or cabinets shall have an exterior finish compatible with the neutral or built environment of the site and shall also comply with such other reasonable design guidelines as may be required by the City.
- (c) Antennas attached to a building or disguised support structure shall be of a color identical to or closely compatible with the surface to which they are mounted.
- (d) Towers shall be surrounded by a landscape strip of not less than ten (10) feet in width and planted with materials which will provide a visual barrier to a minimum height of six (6) feet. The landscape strip shall be exterior to any security fencing. In lieu of the required landscape strip, a minimum six (6) foot high decorative fence or wall may be approved by the City upon demonstration by the applicant that an equivalent degree of visual screening is achieved.

(7) *Location and setback.*

- (a) No antenna support structures, excluding disguised support structures, shall be located within one-half ($\frac{1}{2}$) mile of another, pre-existing antenna support structure with the distance being measured from the center of the base of the existing structure to the center of the base of the proposed structure. Antenna support structures shall not be located within five hundred (500) feet of any residential structure, or any parcel of property used as a park, playground, school, library, hospital, church, historic district, landmark, or an area on the National Register of Historic Places.
- (b) The minimum setback from all adjoining property lines shall be that required for principal structures in the applicable zoning district, plus two (2) additional feet for every additional one (1) foot in height in excess of forty-five (45) feet.

(8) *Height.* Antenna support structures shall not exceed a height of thirty-five (35) feet in residential zoning districts or seventy-five (75) feet in commercial and industrial zoning districts, unless a different height is authorized by the Board of Aldermen.

(9) *Co-use.* Prior to the issuance of any telecommunications facility permit, the applicant shall:

- (a) Submit a notarized statement agreeing to make the proposed antenna support structure available for use by others, subject to reasonable technical limitations and financial terms.
- (b) Furnish an inventory of all known antenna support structures located within one (1) mile of the proposed structure site, identifying the owner of each existing structure as well as the structure's reference name or number, the street location, latitude and longitude, structure type, height, type and mounting height of existing antennas and an assessment of available ground space for the placement of additional shelters. The applicant shall further demonstrate that he or she has requested co-use of each existing structure from the owner thereof and/or shall indicate why such co-use is inappropriate or was otherwise not allowed.
- (c) Antenna support structures may be given consideration to be constructed or modified so as to exceed the height limitations provided herein to accommodate co-use. An applicant may request an extension of twenty (20) additional feet per co-user, whether actual or anticipated, up to a limit of forty (40) additional feet. The City may also require an applicant of new construction to exceed the applicable limitation up to a maximum of forty (40) feet, regardless of whether a co-user is immediately available to share space with the applicant.

- (d) In the event that a telecommunications facility permit is granted for the construction of a new antenna support structure, the applicant shall notify in writing any other known potential service providers in that area that the structure will be available for co-use. Said notices shall be issued on or before the day on which the applicant submits to the City an application for building permit for the structure. The notice shall allow potential co-users thirty (30) days within which to express any interest in co-use, during which time the applicant shall not commit to a design for the structure which precludes co-use, and the City shall not issue a building permit until such time has expired.
- (e) The willful and knowing failure of an applicant to agree to co-use or to negotiate in good faith with potential co-users may be cause for either the denial of a pending application, the revocation of an existing telecommunications facility permit, and/or the withholding of future similar permits to the applicant.

(10) *Site selection.*

- (a) Sites in the City's non-residential zoning districts are preferred. Sites in any residential zoning district in the City are prohibited absent a determination of necessity by the Board of Aldermen. Within any zoning district, existing antenna support structures and buildings are preferred, as are locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.
- (b) Antennas or antenna support structures should be architecturally and visually (color, bulk, size) compatible with surrounding buildings, structures, vegetation, and/or uses in the area or those likely to exist under the regulations of the underlying zoning district.
- (c) Antennas and antenna support structures should be located to minimize any adverse effect they may have on neighboring property values.
- (d) Antennas and antenna support structures should be located to avoid a dominant silhouette on ridge lines, and preservation of view corridors of surrounding residential developments should be considered.

(11) *Building-mounted antennas.*

- (a) Antennas mounted on buildings or structures (other than an antenna support structure) should be made to appear as unobtrusive as possible. Such antennas should be located as far away as feasible from the edge of the building and should be painted a neutral color consistent with the natural or built environment of the site.
- (b) Such antennas shall not protrude more than twenty (20) feet from the top of the building or structure unless the City makes a determination that the proposed antenna poses no detrimental effect to public safety or to the surrounding community.

(12) *Miscellaneous.*

- (a) Ground anchors of all guyed towers shall be located on the same parcel as the tower and at a minimum shall meet the setbacks of the applicable zoning district.
- (b) Vehicle or outdoor storage on the site of any antenna support structure is prohibited.
- (c) On-site parking for periodic maintenance and service shall be provided at all locations of antenna support structures.
- (d) Prior to the issuance of any telecommunications facility permit, the applicant shall demonstrate how the proposed site fits into the applicant's overall telecommunications network within the City of Eureka and within the St. Louis County area.
- (e) Any antenna support structure no longer used for its original communications purpose shall be removed at the owner's expense. The owner and applicable co-users shall provide the City with a copy of any notice to the FCC of intent to cease operations and shall have

ninety (90) days from the date of ceasing operations to remove the antenna support structure and any related facilities. In the case of co-use, this provision shall not become effective until all users cease operations, in which case the final user of said antenna support structure shall have ninety (90) days from the date of ceasing operations to remove the antenna support structure and any related facilities.

- (f) Prior to the issuance of a telecommunications facility permit, an applicant shall demonstrate proof of liability, Workers' Compensation and any other insurance required by the City, and the City may also require indemnification and bonding as the City deems appropriate. Following issuance of a telecommunications facility permit, proof of such liability insurance, Workers' Compensation insurance, any other insurance and other indemnification or bonding required by the City shall be submitted to the City annually.

Section 5-54. Administrative Authority.

Upon receipt of an appropriate building permit, the attachment of additional antennas to any antenna support structure existing on the effective date of this Article or subsequently approved in accordance herewith, provided that the existing antenna support structure is not modified to extend the height thereof, is allowed without the issuance of a telecommunications facility permit.

Section 5-55. Telecommunications Facility Permit.

- (a) *Generally.* Applications for telecommunications facility permits shall be filed, processed, reviewed and decided in the manner and time frame established for special use permits under this Chapter except as supplemented by this Section.
- (b) *Applications.* In addition to all other filing requirements, the application shall include such information as is required or may otherwise be responsive to the criteria, preferences and considerations established in this Section. City staff, boards and commissions may request that additional information be provided or additional analyses performed in connection with their review of the application, the costs of which shall be paid by the applicant.

Section 5-56. Findings Required.

In addition to any other considerations required by this Chapter, before issuing a telecommunications facility permit for an antenna, antenna support structure or a building-mounted antenna, the City shall consider and determine the following based upon the evidence submitted:

- (1) Whether existing antenna support structures or buildings are located within the geographic network area necessary to meet the applicant's system engineering requirements.
- (2) Whether such existing antenna support structures or buildings are of sufficient height to meet system engineering requirements.
- (3) Whether such existing antenna support structures or buildings have sufficient structural strength to support the applicant's proposed antenna(s).
- (4) Whether such existing antenna support structures or buildings could be altered or modified to meet system engineering requirements or to support the applicant's proposed antenna(s).
- (5) Whether the proposed antenna(s) would experience or cause signal interference with antenna(s) on existing antenna support structures or buildings.
- (6) Whether the fees, costs, or other contractual terms required by an owner to lease, modify or otherwise provide for co-use on an existing and suitable antenna support structure or building are reasonable.
- (7) Whether there are other limiting conditions that render existing antenna support structures or buildings within the applicant's required geographic area unsuitable.

Section 5-57. Determination.

- (a) If the Board of Aldermen determines that in light of the considerations noted in this Section that an application meets the criteria and preferences established in this Section and otherwise is in accordance with this Chapter, the Board of Aldermen shall grant a telecommunications facility permit.
- (b) The Board of Aldermen may determine that although an application does not meet the strict requirements of the criteria and preferences established in this Section, that the general purpose and intent of said criteria and preferences are not offended because of the particular circumstances presented. If such a determination is made, the Board of Aldermen may vary the application of the criteria and preferences and grant a telecommunications facility permit, subject to whatever conditions the Board of Aldermen deems appropriate.
- (c) The Board of Aldermen may determine that in light of the consideration noted in this Section, that the City's prescribed criteria and preferences effectively would preclude the applicant's reception and/or transmission of signals and that the applicant's proposed location and height are a matter of absolute engineering and economic necessity in order to ensure the completion of the applicant's network. If such a determination is made, the Board of Aldermen may grant a telecommunications facility permit, subject to whatever conditions the Board of Aldermen deems appropriate.
- (d) Any decision by the Board of Aldermen to deny a telecommunications facility permit shall be in writing, based upon the evidence adduced, and shall make specific findings of fact consistent with the criteria, preferences and considerations established herein.

Section 5-58. Appeal.

Appeals from the Board of Aldermen's denial of a telecommunications facility permit shall be to the Eureka Board of Adjustment or to any court or agency allowed under Federal law.

SECTION 2:

The provisions contained herein shall remain in full force and effect in the event the City or the third party Municipal Code codification company the City engages makes non-substantive changes to the language herein contained or section numbers herein referenced.

SECTION 3:

All ordinances, parts of ordinances or provisions of the Municipal Code of the City of Eureka in conflict with any provisions of this ordinance are hereby repealed.

SECTION 4:

This ordinance shall be in full force and effect from and after its date of passage and approval.

PASSED AND APPROVED THIS 15TH DAY OF NOVEMBER, 2016.

(Original with signature on file)
Kevin M. Coffey, Mayor

ATTEST:

(Original with signature on file)
Ralph M. Lindsey, Jr., City Clerk