

**ORDINANCE NO. 2009-14**

**AN ORDINANCE AMENDING CITY CODE SECTION 300.34 REGARDING  
TELECOMMUNICATIONS FACILITIES**

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The City of Minnetonka Ordains:

Section 1. City code section 300.34 is amended as follows:

1. Purpose and Intent.

The purpose of this section is to establish predictable and balanced regulations for the siting and screening of wireless telecommunication equipment in order to accommodate the growth of wireless communication systems within the city while protecting the public against any adverse impacts on the city's aesthetic resources and the public welfare. This section recognizes that these wireless communication systems provide a valuable service to the public but that they are not a public utility. This section creates two categories of support structures for antennas. The first category consists of existing towers, water towers, and high density residential and non-residential buildings, which the ordinance favors in order to minimize the number of free-standing towers needed to serve the community. The second category consists of all other support structures. The structures in this second category are all classified as free-standing telecommunications towers even if they are intended to replace existing light poles, utility poles, or similar structures. Free-standing towers are subject to increased standards to minimize their visual impact. One such standard is that towers in residential and commercial zoning districts must use state-of-the-art stealth design techniques to disguise the towers and soften their views. A telecommunications company that does not currently use stealth technology will need to develop this capability in order to place free-standing towers in this city. This ordinance does not accept the lowest common denominator and challenges the telecommunications companies to improve their technology.

This ordinance allows minimal use of the public right-of-way for telecommunication antennas because that space should be reserved for public utilities and should be free of safety hazards. In addition, telecommunications facilities located in the right-of-way have the potential of being very visible to the traveling public. In order to locate in a public right-of-way, telecommunications companies must use improved technology to reduce the size and visibility of the their facilities.

2. Definitions.

For the purposes of this section, the terms below have the meaning given to them, unless the context clearly indicates a different meaning:

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The ~~stricken~~ language is deleted; the underlined language is inserted.

- a) “Accessory equipment” means the wires, cables, and other equipment or facilities that are used with antennas.
- b) “Antenna” means a device used for transmitting or receiving telecommunication, television or radio signals that is used for personal wireless telecommunication service or any other purpose, except a device used for the private enjoyment of those on the premises where it is located, such as amateur radio antennas and antennas receiving television signals for viewing on site. “Antenna” also does not include a lightning rod.
- c) “Antenna support structure” means an existing structure that is a telecommunications tower, high density residential or non-residential building, water tower, or electric transmission tower carrying over 200 kilo volts of electricity, that can be used for the location of antennas without increasing the ~~height or~~ mass of the existing structure.
- d) “Engineer” means an engineer licensed by the state of Minnesota, or an engineer acceptable to the city if licensing is not available.
- e) “Stealth design” means state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include architecturally screening roof-mounted antennas and accessory equipment; integrating telecommunications facilities into architectural elements; nestling telecommunications facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the telecommunications facilities; and designing telecommunications towers to appear other than as towers, such as light poles, power poles, flag poles, and trees.
- f) “Telecommunications facilities” means antennas, accessory equipment, and telecommunications towers.
- g) “Telecommunications tower” or “tower” means a free-standing, self-supporting lattice, guyed, or monopole structure constructed from grade intended to support antennas, except towers used for amateur radio operations.

### 3. Administrative Approval.

a) The city planner may grant administrative approval of the following telecommunication facilities:

1) Telecommunications facilities located on electric transmission towers carrying over 200 kilo volts of electricity.

2) Telecommunication facilities located on an antenna support structure that has already been approved by a conditional use permit as the location for a telecommunication facility, if the proposed facility does not involve a variance and is not accompanied by any other matter requiring consideration by the planning commission or city council.

3) A one-time 15-foot extension of an existing monopole telecommunications structure or one-time replacement of an existing monopole by a tower no greater than 15-feet taller than the existing monopole may be administratively approved if the proposed facility does not involve a variance and is not accompanied by any other matter requiring consideration by the planning commission and city council.

b) Administrative review and approval is subject to the following:

1) Submittal of a complete site and building plan review application, accompanied by a registered land survey, complete site plan, building elevations, and antenna elevations and be signed by a registered architect, civil engineer, landscape architect or other appropriate design professional.

2) Submittal of an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of the applicant's system. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis; and

3) Submittal of any necessary easements and easement exhibits, which have been prepared by an attorney knowledgeable in the area of real estate and which are subject to the city attorney's approval.

c) The city planner will render a decision within 30 days and serve a copy of the decision upon the applicant by mail.

d) Any person aggrieved by a decision of the city planner may appeal the decision to the planning commission in the manner specified in section 300.04 of this ordinance.

#### 34. Conditional Use.

Telecommunications facilities that are not eligible for administrative approval under

subdivision 3 are permitted only as a conditional use in all zoning districts and must be in compliance with the provisions of this section.

~~4. District Standards.~~

a) Conditional use telecommunication facilities are subject to the review procedures outlined in section 300.06 of this ordinance.

b) Conditional use telecommunications facilities are subject to the following standards:

a1) Residential and commercial zoning districts.

4)a. Telecommunication facilities may be located only on public or institutional property ~~in these areas:~~ in R-1 and R-2 residential districts and on property guided for low-density residential in the Planned I-394 District, subject to the standards listed in subparagraphs b through e which follow.

~~2) Antennas must be located on antenna support structures in residential and commercial districts, except as provided in subparagraphs 3 and 4 below.~~

~~3) Antennas may be located on a new or replacement telecommunications tower in commercial and residential districts only if the applicant complies with all of the following requirements:~~

a)b. ~~The An~~ applicant must provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and that there is no existing antenna support structure that could adequately serve the area if antennas were placed on it. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis;

b)c. ~~The A~~ telecommunications facilities-facility must use as many stealth design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide stealth design techniques. The city council may require that a different location be used if it would result in less public visibility, is available, and would meet the applicant's reasonable capacity and coverage needs; and

e)d. ~~The A~~ telecommunications tower and antennas, including attachments other than lighting rods, must not exceed 75 feet in height, measured from grade. The city council may increase this height to 90 feet if the increase in height would not have a significant impact on surrounding properties because of proximity,

topography or screening by trees or buildings or would accommodate two or more users. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety.

4)e. Telecommunications facilities may be located ~~in residential and commercial districts~~ in the public right-of-way of a major collector or arterial roadway as defined in the comprehensive plan, ~~except in the special areas designated in subsection 6 below,~~ if they meet all of the following requirements:

1. The facility is not located within a special area designated subdivision 7;

a)2. ~~Telecommunications facilities~~The facility, including attachments other than lighting rods, may not exceed 60 feet in height measured from grade. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety;

b)3. ~~Telecommunications facilities~~The facility must use as many stealth design techniques as reasonably possible. In particular, the antennas must be designed to minimize their size and appearance and may not project out from the side of the tower by more than two feet. Economic considerations alone are not justification for failing to provide stealth design techniques; and

e)4. ~~Telecommunications facilities~~The facility must also comply with the requirements in ~~sub-section subdivision 56~~(k) below.

b2) Industrial districts.

1)a. Antennas may be located in industrial districts on either an antenna support structure or a telecommunications tower and may be on any right-of-way.

2)b. In industrial districts, a telecommunications tower, including attachments other than lighting rods, may not exceed 150 feet in height, measured from grade. The city council may allow towers up to 199 feet high if the applicant can demonstrate that off-site views of the tower will be minimized by the topography of the site and surrounding area, the location of the tower, the tower design, the surrounding tree cover and structures, or the use of screening. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety.

3)c. No part of a tower in an industrial district may have a horizontal area of more than 500 square feet.

d. An applicant must provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and that there is no existing antenna support structure that could adequately serve the area if antennas were placed on it. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis.

## 5. General Standards.

The following standards apply to all telecommunications facilities.

- a) Vertical projection on antenna support structures. Antennas mounted on an antenna support structure must not extend more than 15 feet above the height of the structure to which they are attached. Wall or facade-mounted antennas may not extend above the cornice line and must be constructed of a material or color that matches the exterior of the building.
- b) Horizontal projection. Antennas must not project out from the side of the antenna support structure or tower by more than three feet, except if located in an industrial district.
- c) Setbacks. A tower adjacent to a R-1, R-2, or R-3 zoning district must meet the building setback that is established for the district where it is to be located, but only from the residential zone. This setback is not required for a tower in a right-of-way. The city may waive this setback requirement if necessary to implement stealth design techniques or if the residentially zoned property is public or institutional property. An accessory equipment cabinet that is greater than 120 square feet in size must be at least ten feet from all property lines.
- d) Height. The height of an antenna and tower must be the minimum necessary to meet the applicant's coverage and capacity needs, as verified by an electrical engineer or other appropriate professional. The city council may waive this requirement if additional height is appropriate for co-location opportunities.
- e) Exterior surfaces. Towers and antennas must be painted a non-contrasting color consistent with the surrounding area such as: blue, gray, brown, or silver, or have a galvanized finish to reduce visual impact. Metal towers must be constructed of, or treated with, corrosion-resistant material
- f) Ground-mounted equipment. Ground-mounted accessory equipment or buildings must be architecturally designed to blend in with the surrounding environment, including the principal structure, or 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. No more than one accessory building is permitted for each tower. Additional space needed for the co-location of antennas must be added to an existing accessory building in a manner to make it appear as one building. Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review under section 300.27 of this code.

- g) Construction. Telecommunications facilities must be in compliance with all building and electrical code requirements. A tower must be designed and certified by an engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the telecommunications facilities must be in compliance with the manufacturer's specifications.
- h) Co-location opportunity. If a new tower over 60 feet in height is to be constructed:
- 1) the tower must be designed to accommodate both the applicant's antennas and antennas for at least one additional comparable user;
  - 2) the tower must be designed to accept antennas mounted at additional heights;
  - 3) the applicant, the tower owner, the landowner, and their successors must allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use, must submit a dispute over the potential terms and conditions to binding arbitration, and must sign the conditional use permit agreeing to these requirements. The city council may waive these co-location requirements if necessary to implement stealth design.
- i) External messages. No advertising message or identification sign larger than two square feet may be affixed to the telecommunications facilities.
- j) Lighting. Telecommunications facilities may not be artificially illuminated unless required by law or by a governmental agency to protect the public's health and safety or unless necessary to facilitate service to ground-mounted equipment.
- k) Rights-of-way. Telecommunications facilities located within a right-of-way must not negatively impact the public health, safety and welfare, interfere with the safety and convenience of ordinary travel over the right-of-way, or otherwise negatively impact the right-of-way or its users. In determining compliance with this standard, the city may consider one or more of the following factors:
- 1) the extent to which right-of-way space where the permit is sought is

available, including the placement of the ground equipment;

- 2) the potential demands for the particular space in the right-of-way;
- 3) the availability of other locations in a right-of-way that would have less public impact;
- 4) the extent to which the placement of the telecommunications facilities minimizes impacts on adjacent property; and
- 5) the applicability of ordinances or other regulations of the right-of-way that affect location of equipment in the right-of-way.

Telecommunications facilities approved within a city right-of-way must receive a right-of-way permit from the city engineer. Ground-mounted accessory equipment that is greater than 150 cubic feet is prohibited within any right-of-way.

- l) On-site employees. There must be no employees on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.
- m) Landowner authorization. When applicable, the applicant must provide written authorization from the property owner. The property owner must sign the conditional use permit agreeing to the permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city's right to assess removal costs under paragraph (n) below.
- n) Removal. Obsolete telecommunications facilities must be removed within 90 days after cessation of their use at the site, unless an exemption is granted by the city council. Unused telecommunications facilities and all related equipment must be removed within one year after cessation of operation at the site, unless an exemption is granted by the city council. Telecommunications facilities and related equipment that have become hazardous must be removed or made not hazardous within 30 days after written notice to the current owner and to any separate landowner, unless an exemption is granted by the city council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and to the taxpayer of the property listed in the Hennepin county tax records. Telecommunications facilities and all related equipment that are not removed within this time limit are declared to be public nuisances and may be removed by the city. The city may assess its costs of removal against the property.
- o) Historic Places. No telecommunication tower may be located with 400 feet of the boundary of any property that contains a facility or structure listed on the national

register of historic places. Antennas may be located in this restricted area only if they are hidden from public view.

67. Special Area Requirements.

a) The special areas of Minnetonka Mills, Glen Lake Station and Minnetonka Boulevard/County Road 101 are recognized within the comprehensive plan as unique neighborhood commercial nodes. They are planned to have improved street appeal including pedestrian walkways with landscaped boulevards and street lights, buried utilities, and coordinated signs and facade improvements. Accordingly, there is a presumption that telecommunication facilities are prohibited in these areas. An applicant may overcome this presumption by submitting an analysis prepared by a radio or electrical engineer showing that no other available location allowed under this ordinance would meet its reasonable coverage and capacity needs. The applicant must pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis.

b) If telecommunications facilities are permitted in these special areas under paragraph (a) above, then the installation of telecommunications facilities in these special areas must meet the following additional standards:

1) Ground-mounted accessory equipment must be placed within a principal building. If space is not available in the principal building, an accessory building may be used if it meets the applicable district standards and is constructed of building materials similar to the principal building; and

2) Telecommunications facilities cannot be within the right-of-way or within any front yards. The city council may waive one or both of these additional standards if the proposal would provide public benefit, such as improving the current aesthetics of the site.

Section 2. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 3. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on September 14, 2009.

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Terry Schneider, Mayor

ATTEST:

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David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: July 13, 2009  
Date of adoption: September 14, 2009  
Motion for adoption: Allendorf  
Seconded by: Greves  
Voted in favor of: Allendorf, Ellingson, Greves, Hiller, Schneider, Wagner, Wiersum  
Voted against:  
Abstained:  
Absent:  
Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on September 14, 2009.

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David E. Maeda, City Clerk