

ORDINANCE NO. 2010-06

**AN ORDINANCE AMENDING CITY CODE §300.34
REGARDING TELECOMMUNICATIONS FACILITIES IN RIGHT-OF-WAY**

The City of Minnetonka Ordains:

Section 1. City code §300.34, subdivision 3(a) is amended as follows:

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 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; and

4) Telecommunication facilities that are attached to an existing public utility structure within a right-of-way if:

a. the telecommunication facility does not extend above the top of the existing utility structure and the height of the existing utility structure is not increased to accommodate the telecommunication facility;

b. any replacement utility structure does not exceed the height of the existing utility structure, including the telecommunication facility, and does not exceed the diameter of the existing utility structure by more than 50 percent;

c. the telecommunication facility is no larger than three cubic feet and has no individual surface larger than four square feet;

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

- d. the telecommunication facility extends outward from the utility structure by no more than two and one-half feet, except that an antenna no greater than one half inch in diameter may extend an additional six inches;
- e. there is no ground mounted equipment;
- f. there is no interference with public safety communications or with the original use of the public utility structure; and
- g. the telecommunication facility must be removed and relocated when the road authority requires the removal and relocation of the public utility structure.

Section 2. City code §300.34, subdivision 4 is amended as follows:

4. 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.

- 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:
 - 1) Residential and commercial zoning districts.
 - a. Telecommunication facilities may be located only on public or institutional property 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.
 - b. 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;
 - c. A telecommunications 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

d. 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.

e. Telecommunications facilities may be located in public right-of-way of a major collector or arterial roadway as defined in the comprehensive plan if they meet all of the following requirements:

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

2. The facility is not located adjacent to residentially zoned property unless the applicant demonstrates by providing a study 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 no other location is feasible in a non-residential zone;

3. 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

4. The facility must also comply with the requirements in subdivision 5(k) below.

2) Industrial districts.

a. Antennas may be located in industrial districts on an antenna support structure, a public utility facility, or a telecommunications tower and may be on any right-of-way. Antennas on a right-of-way must also comply with the requirements in subdivision 5(k) below.

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.

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.

Section 3. City code §300.34, subdivision 5(k) is amended as follows:

k) Rights-of-way. All telecommunication facilities in a public right-of-way must comply with the following:

1) 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:

a. the extent to which right-of-way space where the permit is sought is available, including the placement of the ground equipment;

b. the potential demands for the particular space in the right-of-way;

c. the availability of other locations in a right-of-way that would have less public impact;

d. the extent to which the placement of the telecommunications facilities minimizes impacts on adjacent property; and

e. the applicability of ordinances or other regulations of the right-of-

way that affect location of equipment in the right-of-way;

2) The facility, including attachments other than lighting rods, may not exceed 60 feet in height measured from grade in residential and commercial zones, or 75 feet in industrial zones. The city council may waive this height standard for a facility used wholly or partially for essential public services, such as public safety;

3) The support structure for the antennas cannot exceed the diameter of the closest public utility pole by more than 50 percent, but in no event may exceed 18 inches in diameter;

4) Antennas and other components must not project out from the side of the support structure by more than two feet in residential and commercial districts or three feet in industrial districts;

5) The support structure for the antennas must match the materials and color of the closest public utility structures in the right-of-way, if required by the director of planning;

6) Ground mounted equipment will be allowed only if:

- a. the equipment will not disrupt traffic or pedestrian circulation;
- b. the equipment will not create a safety hazard;
- c. the location of the equipment minimizes impacts on adjacent property; and
- d. The equipment will not adversely impact the health, safety, or welfare of the community;

7) Ground mounted equipment must be:

- a. set back a minimum of 10 feet from the existing or planned edge of the pavement;
- b. separated from a sidewalk or trail by a minimum of 3 feet;
- c. set back a minimum of 50 feet from the nearest intersection right-of-way line;
- d. set back a minimum of 50 feet from the nearest principal residential

structure;

e. separated from the nearest ground mounted telecommunication facilities in a right-of-way by at least 330 feet;

f. no larger than 3 feet in height above grade and 27 cubic feet in size in residential districts;

g. no larger than 5 feet in height above grade and 81 cubic feet in size in non-residential districts; and

h. screened by vegetative or other screening compatible with the surrounding area if deemed necessary by the director of planning;

8) The antennas cannot interfere with public safety communications;

9) The telecommunication facility must be removed and relocated when the road authority requires the removal and relocation of public utility structures; and

10) Telecommunications facilities within a right-of-way must receive a right-of-way permit from the appropriate road authority.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on April 5, 2010.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

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

ACTION ON THIS ORDINANCE:

Date of introduction: March 8, 2010

Date of adoption: April 5, 2010

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 April 5, 2010.

David E. Maeda, City Clerk