

## Article XI: Telecommunications

### § 25-79. Purpose. (New)

This section provides for the appropriate location and deployment of wireless communications infrastructure to better serve the citizens and businesses of the City of Kirkwood. The purpose of this section is to:

- (a) Minimize adverse visual impacts of wireless facilities and support structures through careful design, siting, and landscaped screening;
- (b) Maximize the use of existing and new facilities so as to minimize the need to construct new or additional facilities; and
- (c) Comply with applicable federal and state laws, including the Federal Telecommunications Act of 1996 and the Uniform Wireless Communications Infrastructure Deployment Act 67.5090 et seq RSMO.

### § 25-80. General Requirements.

The following general requirements shall apply to all telecommunications infrastructure permitted in all zoning districts:

#### (a) Antenna Support Structures Over 150 Feet in Height

Any antenna support structure which is proposed to be in excess of 150 feet in height is not permitted unless authorized by the Planning and Zoning Commission for co-use or other considerations such as to provide personal wireless services, or reasonably required for public safety communications of a governmental entity sharing the antenna support structure.

#### (b) Lighting

Antennas and antenna support structures shall not be lighted unless required by the FAA or a state or federal agency with authority to regulate, in which case a description of the required lighting scheme will be made part of the application to install, build, or modify the antenna or antenna support structure.

#### (c) Advertising

Unless a disguised support structure is in the form of an otherwise lawfully placed pylon sign, the placement of signs on structures regulated by this section is prohibited.

#### (d) Design

- (1) Unless subject to the requirements of the FAA or any applicable state or federal agency, towers shall maintain a galvanized steel finish or be painted a neutral color consistent with the natural or built environment of the site.
- (2) Antenna equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the site, and may also be brick or other masonry material as required by the Planning and Zoning Commission or by the City Council in the case of a special use permit.
- (3) Antennas attached to a building or antenna support structure shall be painted a color identical to, or compatible with, the surface to which they are mounted.

- (4) All towers shall be surrounded by a landscape strip of not less than 10 feet in width, and planted with materials which will provide a visual barrier of a minimum height of 6 feet. Evergreen trees should be at least 6 feet tall, and deciduous trees at least 2.5 inches in caliper. Said landscape strip shall be exterior to any security fencing. In instances where a landscape strip is not practical or feasible, a minimum 6-foot high decorative fence or wall in lieu of the landscape strip may be approved by the Director of Public Services.
  - (5) All towers shall be set back from any adjacent residentially zoned property a distance equal to the height of the tower, and shall maintain setbacks as are required by the zoning district regulations.
  - (6) Ground anchors of all guyed towers shall be located on the same parcel as the tower and meet the setbacks of the applicable zoning district.
  - (7) Vehicle or outdoor storage on any antenna support structure site is prohibited.
  - (8) On-site parking for periodic maintenance and service shall be provided at all antenna or antenna support structure locations. Access to and parking for antenna or antenna support structure locations shall be provided on a paved surface.
- (e) Shared Use<sup>53</sup>**
- (1) In order to maximize the use of an existing or proposed wireless tower, the tower owner shall, prior to the issuance of any building permit to alter or modify any tower existing on the effective date of this code, provide to the City a written and notarized statement agreeing to make said tower available for use by others subject to reasonable technical limitations and at a fair market rate. The willful and knowing failure of a tower owner to agree to shared use or to negotiate in good faith with potential users shall be cause for the withholding of future permits to the same tower owner to install, build or modify antennas or antenna support structures within the City.
  - (2) Any new tower at a height of 60 feet above ground level or higher shall be designed and constructed to accommodate at least one additional user unless a larger number is indicated by the City. In addition, the tower shall be designed and constructed to reasonably accommodate use by the City and made available at a fair market value for space. The willful and knowing failure of the owner of a tower built for shared use to negotiate in good faith with potential users shall be cause for the withholding of future permits to the same owner to install, build or modify antennas or antenna support structures within the City.
- (f) Modifications (New)<sup>54</sup>**
- (1) Changes to existing antennas, towers, or structures that are not "substantial modifications" as defined herein shall only be reviewed for conformance with applicable building permit requirements, National Electric Safety Codes, and recognized industry standards for structural safety, capacity, reliability and engineering, without any Commission review.
  - (2) For purposes of this section, a "substantial modification" is defined as the mounting of an antenna on a tower or other structure which, as applied to the structure as it was originally constructed:

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<sup>53</sup> Reference to fair market value for co-location was added to reflect the State law

<sup>54</sup> New, sets parameters for when a Building Permit or Facilities Permit is needed

- (i) Increases the existing vertical height of the tower or structure by:
  - a. More than 10 percent; or
  - b. The height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
- (ii) Involves adding an appurtenance to the body of a tower or structure that protrudes horizontally from the edge of the existing tower or structure more than 20 feet or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);
- (iii) Involves the installation of more than the standard number of new outdoor equipment cabinets for the technology involved, not to exceed four new equipment cabinets; or
- (iv) Increases the square footage of the existing equipment compound by more than 1,250 square feet.
- (v) Substantial modifications require a facilities permit, which shall be subject to Section <> hereof.

**(g) Limitation on Regulations and Commission Exceptions (NEW)<sup>55</sup>**

- (1) In considering a facilities permit application, the Planning and Zoning Commission may grant an exception to any such regulation based on a clear showing that the exception is reasonably required to provide communications services. Such showing shall be supported by the opinion of a telecommunications consultant hired by the City at the expense of the applicant. The opinion of the consultant shall include a statement explaining why alternatives are not available or viable.
- (2) Nothing in this article shall be construed or deemed to supersede any applicable State or Federal law or any applicable regulation issued by a State or Federal agency, including, but not limited to, the Missouri Public Service Commission and the Federal Communications Commission. In the event of any conflict between such laws or regulations and this article, the applicable State or Federal law or regulation shall apply.

**§ 25-81. Permitted Use.**

Upon receipt of the appropriate building permit, the following are allowed:

- (a) The attachment of additional antennas or the replacement of antennas to any tower or the addition or replacement of antenna equipment shelters existing on the effective date of this code or subsequently approved in accordance with these regulations, provided that additional antenna equipment shelters or cabinets are located within the existing antenna support structure site.
- (b) The mounting of antennas in or on any existing building or structure (such as a water tower, church steeple, billboard, utility pole, or tower used for high voltage electric lines) provided that the building or structure has been in service for at least one year in a functional use prior to application and provided that the height of the antenna does not exceed 20 feet from its mounting.

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<sup>55</sup> Sets exceptions allowed through new Facilities Permit process

- (c) The installation of antennas on buildings or structures or the construction of an antenna support structure on land owned by the City of Kirkwood following the approval of a lease agreement by the City Council.
- (d) The maintenance without alteration of any antenna support structure existing on the date of the enactment of this code. Modification to an existing antenna support structure, including but not limited to the replacement or addition of any antennas or equipment shelters, shall be subject to all the provisions of this code.

**§ 25-82. Required Permits. (NEW)<sup>56</sup>**

**(a) General Requirements**

- (1) Applications for a facilities permit shall be filed in lieu of a building permit application.
- (2) Applications for building or facilities permits under this article shall be accompanied by an application fee approved by the City to cover the cost of processing the application, any deposit otherwise required by law for the proposed work, and any other amounts due to the City from the applicant, including but not limited to prior delinquent fees, costs, and any loss, damage, or expense suffered by the City because of the applicant's prior work in the City or for any emergency actions taken by the City, but the Director of Public Services may modify this requirement to the extent the Director of Public Services determines any such fees to be in good-faith dispute or beyond the ability of the applicant to control.
- (3) If the regulations of this article would prohibit facilities at a specified location, the applicant may request an exception from the Planning and Zoning Commission as provided in <>. The City's form application shall include an exception option by which the applicant shall provide the reasons for the requested exception.
- (4) Applications shall be reviewed and acted upon within the timeframes provided in this article. The City acknowledges that Federal law or regulations may prescribe deadlines not consistent with those included in this article, but the certainty of such Federal deadlines cannot be effectively ascertained and prescribed herein. It shall be incumbent upon the applicant to inform the City of any desire to utilize Federal deadlines and to explain the applicability of same at the time of application. The City's form application shall include a Federal deadline option.

**(b) Facilities Permits**

- (1) The construction, installation, and substantial modification of antennas and towers shall require a facilities permit approved by the Planning and Zoning Commission.
- (2) Applications for facilities permits shall be made to the Director of Public Services on forms provided by the Director. Prior to filing an application, the applicant shall meet with the Director of Public Services to determine the information to be required in support of the application.
  - (i) Each application shall be accompanied by payment of a fee established by the City Council.

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<sup>56</sup> This sets out a two-pronged approach to permitting, in order to reflect the State regs. The Facilities Permits section generally replaces the no longer allowed special use permit, and reflects the shot-clock elements for new or substantially modified facilities. The Building Permit section complies with the shot-clock elements for co-location and repair/minor modification.

- (ii) Each application shall include a copy of a lease, letter of authorization or other agreement from the property owner evidencing applicant's right to pursue the application.
- (3) Facilities permit applications shall be accompanied by detailed construction and installation plans demonstrating proof of compliance with the regulations of this article and the need for any exception to any such regulation. An application proposing a tower shall include a detailed site plan based on a closed boundary survey of the host parcel indicating:
  - (i) All existing and proposed improvements, including buildings, drives, walkway, parking areas and other structures,
  - (ii) The location of trees on such parcel,
  - (iii) The general location of the improvements on all adjoining properties,
  - (iv) Public rights-of-way, the zoning categories of the host parcel and adjoining properties, the location of buffer and landscape areas, hydrologic features, and the coordinates and height of the proposed facility,
  - (v) Any statements or information required by this article, and
  - (vi) Such other information as the Director of Public Services reasonably deems appropriate.
- (4) After receiving an application to construct a new tower, the Planning and Zoning Commission shall have one hundred twenty (120) days from the date of the application's submission, or such additional time as may be agreed to by an applicant and the Director of Public Services, to approve or deny the application and to advise the applicant in writing of its final decision.
  - (i) Within 30 days of receiving the application, the Director of Public Services shall review the application and, if the application does not conform with the submission requirements of this section, shall notify the applicant in writing of the specific deficiencies in the application which, if cured, would make the application complete.
  - (ii) Upon receipt of a timely written notice that an application is deficient, an applicant may take 30 calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within 30 calendar days, the application shall be reviewed and processed within 120 calendar days from the initial date the application was received. If the applicant requires a period of time beyond 30 calendar days to cure the specific deficiencies, the 120 calendar days' deadline for review shall be extended by the same period of time.
  - (iii) If the Commission fails to act on an application within the 120 calendar days' review period, or an extension thereof due to an incomplete application, or within such additional time as may be agreed to by an applicant and the Director of Public Services, the application shall be deemed approved.
  - (iv) A party aggrieved by either the Director's final decision or the purported failure to timely act may bring an action for review in the St. Louis County Circuit Court, without filing an appeal to the City Council as permitted by Section <> hereof. If the party elects to appeal to the City Council, any time period for the filing for court review shall run from the date of the City Council's decision.

**(c) Criteria for Facilities Permit Approval**

The Planning and Zoning Commission shall consider the evidence submitted with the facilities permit application as well as additional information presented by the applicant or others. Before approving a facilities permit the Commission shall consider and determine the following, as may be applicable, based on the evidence submitted:

- (1) Whether the application complies with the requirements of this article;
- (2) Whether an existing tower or structure may meet the applicant's requirements;
- (3) Whether a tower has sufficient structural strength to support the applicant's proposed antenna and required screening;
- (4) Whether the proposed antenna would experience or cause signal interference with other telecommunication facilities;
- (5) Whether the fees, costs, or other contractual terms required by the owners of existing towers within the required geographic area of the applicant, or to retrofit the existing structures, are reasonable;
- (6) Whether the design of the antenna, tower, or structure maximally reduces visual degradation; and
- (7) Whether the proposed antenna or tower minimizes the number and size of similar facilities that will be required in the geographic area surrounding the proposed site.

**(d) Review, Determination and Appeal**

- (1) The Planning and Zoning Commission shall review and determine applications as provided in Section <>.
- (2) A decision to deny an application shall be based upon substantial evidence that shall be made a part of the written record of the meeting at which a final decision on the application is rendered.
- (3) Any aggrieved person may, within 15 days of the decision for which redress is sought, file with the City Council a written request for reconsideration and appeal of any decision of the Planning and Zoning Commission under this article. The written request must set forth in a concise manner the decision being appealed and all grounds known to the appellant as to wherein and why the decision is allegedly in error. The request for reconsideration and appeal must be filed with the City Clerk within the time specified above. A copy of the request and any supporting documents or materials filed by aggrieved party must be served by the aggrieved party on the applicant (if different than the aggrieved party) by certified U.S. Mail, return receipt requested, within three days of filing with the City Clerk. Proof of service on the applicant must be filed with the City Clerk within six days of filing of the request. The City Council may consider the appeal on the record of the prior decision by the Planning and Zoning Commission or may, at its sole discretion, receive additional evidence in such manner as it deems appropriate in light of the circumstances.
- (4) Any person aggrieved by the City Council's final decision may bring an action for review in the St. Louis County Circuit Court.

**(e) Building Permits**

- (1) Antennas not requiring a facilities permit, and proposals for tower or structure co-use or proposed replacements for already-permitted towers or antennas, when such proposals do not constitute substantial modifications as defined in Section <> hereof, shall be subject to a building permit only. Such building permit applications shall only be reviewed for conformance with applicable building permit requirements, National Electric Safety Codes, and recognized industry standards for structural safety, capacity, reliability and engineering, without any Planning and Zoning Commission review.
- (2) An application for a building permit shall be filed with the Director of Public Services and shall include, among other information that may be required, the following:

  - (i) Detailed construction and installation plans demonstrating proof of compliance with Section <>;
  - (ii) Site plan of the parcel upon which the installation is to be made showing the specific location of the proposed installation and all improvements on the parcel;
  - (iii) A copy of a lease, letter of authorization or other agreement from the property owner evidencing applicant's right to pursue the application; and
  - (iv) Such other information reasonably required by the Director of Public Services.
  - (v) After receiving a building permit application, the Director of Public Services shall have 45 days from the date of the application's submission, or such additional time as may be agreed to by an applicant and the Director, to approve or deny the application and to advise the applicant in writing of a final decision.
  - (vi) Within 15 days of receiving the application, the Director shall review the application and, if the application does not conform with the submission requirements of this section, shall notify the applicant in writing of the specific deficiencies in the application which, if cured, would make the application complete.
  - (vii) Upon receipt of a timely written notice that an application is deficient, an applicant may take 15 calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within 15 calendar days, the application shall be reviewed and processed within 45 calendar days from the initial date the application was received. If the applicant requires a period of time beyond 15 calendar days to cure the specific deficiencies, the 45 calendar days' deadline for review shall be extended by the same period of time.
  - (viii) If the Director fails to act on an application within the 45 calendar days' review period, or an extension thereof due to an incomplete application as provided in this section, or within such additional time as may be agreed to by an applicant and the Director, the application shall be deemed approved.
  - (ix) A party aggrieved by either the Director's final decision or the purported failure to timely act may bring an action for review in the St. Louis County Circuit Court, without filing an appeal to the City Council as permitted by Section <> hereof. If the party elects to appeal to the City Council, any time period for the filing for court review shall run from the date of the City Council's decision.

**§ 25-83. Tower Removal.**

Any tower, or the upper portion of any tower, which is occupied by inactive antennas for a period of twelve months shall be considered a public nuisance and the tower and support structure, including footings, where appropriate, be removed at the owner's expense. Removal of upper portions of a tower manufactured as a single object shall not be required. In instances where more than one antenna is collocated on the tower, it shall not be considered inactive until all antennas are no longer in use.