

## ORDINANCE NO. 13-37

### AN ORDINANCE AMENDING THE DEEPHAVEN CITY CODE BY ADDING REGULATION OF WIRELESS COMMUNICATIONS TOWERS

The City Council of the City of Deephaven, Minnesota, ordains:

**Section 1.** Section 1300 of the Code of the City of Deephaven is amended by the addition of the following Section 1311:

1311.01 Council Findings. The Communications Act of 1934 as amended by the Telecommunication Act of 1996 grants the Federal Communications Commission jurisdiction over many aspects of telecommunications services. The City's regulation of Towers and Wireless Telecommunications Facilities (WTFs) in the City will not have the effect of prohibiting any person from providing wireless telecommunications services in violation of the Act.

1311.02 Purpose. The general purpose of this Section is to regulate the placement, construction, and modification of Towers and WTFs in order to protect the health, safety, and welfare of the public, while at the same time encouraging the development of the competitive wireless telecommunications marketplace in the City. The specific purposes of this Section are:

- (a) To allow the location of telecommunication Towers and WTFs in the City;
- (b) To protect residential areas from potential adverse impact of Towers and WTFs;
- (c) To minimize adverse visual impact of Towers and WTFs through careful design, siting, landscaping, and innovative camouflaging techniques;
- (d) To require the collocation of Towers and Antenna support structures as a primary option rather than construction of additional single-use Towers;
- (e) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support WTFs;
- (f) To avoid potential damage to property caused by Towers and WTFs by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound;
- (g) To ensure that Towers and WTFs are compatible with surrounding land uses;

- (h) To overcome the potential adverse impacts that poorly or unregulated Towers and WTFs could have on public health, safety and welfare;
- (i) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.

1311.03 Definitions. For the purposes of this Section, the following terms, phrases, words, and their derivatives shall have the meanings stated below:

Subd. 1. Antenna. Any exterior transmitting or receiving device mounted on a Tower, building or other structure and used in communications that radiate or capture electromagnetic waves, digital signs, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals.

Subd. 2. Collocations. The sharing of structures by two or more wireless service providers on a single support structure or otherwise sharing a common location.

Subd. 3. Dish Antenna. A parabolic shaped antenna (including all supporting apparatus) which is used for transmitting or receiving telecommunication, television or radio signals, which is located on the exterior of, or outside of, any building or structure.

Subd. 4. Height. When referring to a Tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the Tower or other structure, including the base pad and any Antenna.

Subd. 5. Monopole. A slender self-supporting Tower used to support telecommunications equipment.

Subd. 6. Tower. Any pole, spire, or other structure, including supporting lines, cables, wires, braces and masts, intended primarily for the purpose of mounting an Antenna or similar apparatus above grade.

Subd. 7. Wireless Telecommunications Facility (WTF). Any cables, wires, lines, wave guides, Antennas, and any other equipment or facilities associated with the transmission or reception of communications (other than radio or television broadcast communications) which a person seeks to locate or have installed upon or near a Tower, building or structure, but shall not include:

- (a) Any satellite earth station reception Antenna one meter or less in diameter, regardless of zoning district;
- (b) Automatic meter reading systems;

- (c) Military, federal, state and local government communications Towers and Antennas used for navigational purposes, emergency preparedness or public safety purposes;
- (d) A WTF to the extent that a permit issued by the Federal Communications Commission or state authority specifically provides that such WTF is exempt from local regulation.

1311.04 Towers and Wireless Telecommunication Facilities Building and Design Standards. All Towers and WTFs must be constructed in accordance with the following standards:

Subd. 1. Siting. WTFs located on or attached to existing structures are regulated by the provisions of the zoning district for each parcel. Towers may only be located on parcels owned and controlled by the City of Deephaven. Towers are not permitted in public rights-of-way.

Subd. 2. Color and Architecture. All WTFs shall be concealed or camouflaged and shall utilize materials, colors, textures, screening and landscaping to blend in with the surrounding natural setting and built environment. If a WTF is proposed on any part of a building or structure, it must blend with such structure's design, architecture and color, including exterior finish. The term "camouflage" shall not mean invisible, but rather appearing as part of another structure, such as a building, wall or roof, or designed to appear as another structure, such as a building, clock tower, chimney, flag pole, light pole or tree.

Subd. 3. Landscaping. The following requirements shall govern the landscaping surrounding Towers; provided, however, that the City Council, after considering the recommendation of City Staff, may waive such requirements if the visual impact of a proposed Tower or WTF would be minimal or if the purposes of this Section would otherwise be better served thereby.

- (a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the Tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
- (b) Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as Towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer. Existing mature trees and other vegetation at the site shall be preserved to the maximum extent possible.

Subd. 4. Signs. The use of any portion of a Tower of WTF for signs advertising other than warning or equipment information signs is prohibited.

Subd. 5. Lighting. WTFs and Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority. When incorporated into the approved design of a WTF, light fixtures used to illuminate ball fields, parking lots or similar areas may be attached to the Tower.

Subd. 6. Monopole. New Towers shall be of a monopole design, without guide wires, unless the City Council determines that an alternative design would better blend into the surrounding environment.

Subd. 7. Setbacks. Towers and WTFs shall comply with the principal structure setbacks of the underlying zoning district and the following additional standards:

- (a) The Tower of WTF is set back from all residential dwellings at least one (1) foot for each foot in height.
- (b) Towers and WTFs shall not encroach upon any easements unless permission is obtained from the underlying property owner of the easement.
- (c) Towers and WTFs shall not be located between a principal structure and a public street.
- (d) The required setbacks may be reduced or the location in relation to a public street modified, at the sole discretion of the City, when the WTF is integrated into an existing or proposed structure such as a building, light or utility pole.

Subd. 8. Height.

- (a) The height of any Tower shall not exceed one hundred (100) feet.
- (b) Antenna located on an existing structure that is taller than the limit allowed in the underlying zoning district may extend up to five (5) feet above the height of the structure.

Subd. 9. Safety and Environmental Standards.

- (a) Building codes; safety standards. To ensure the structural integrity of Towers, the owner of a Tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for Towers that are published by the Electronics Industries Association, as amended from

time to time. If, upon inspection, the City concludes that a Tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the Tower, the owner shall have thirty (30) days to bring such Tower into compliance with such standards. Failure to bring such Tower into compliance with such thirty-day period shall constitute grounds for the removal of the Tower or Antenna at the owner's expense.

- (b) Interference with Public Safety Telecommunications. No Tower or WTF shall interfere with public safety telecommunications. All Towers or WTFs shall comply with FCC regulations and licensing requirements.
- (c) Security Fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the City Council, after considering the recommendations of City Staff, may waive such requirements, as it deems appropriate.
- (d) Noise. If the proposed WTF includes equipment that causes or a WTF otherwise causes significant increased sound levels, sound buffers may be required including but not limited to, baffling, barriers, enclosures, walls and plantings.
- (e) Radio Frequency Emissions and Interference. WTFs must comply with Federal Communication Commission standards for radio frequency emissions and interference.
- (f) Risk of Danger. Towers and WTFs shall not pose an unreasonable risk of explosion, fire or other danger due to its proximity to volatile, flammable, explosive or hazardous materials.
- (g) Maintenance. All commercial Towers or WTFs shall at all times (i) be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any person, and (ii) allow sufficient access for service vehicles and personnel.

Subd. 10. Collocation Requirements. To every extent possible:

- (a) All proposed WTFs shall be placed on an existing Tower, building or structure locate within one-half mile of the desired location for proposed WTF;
- (b) All wireless telecommunication providers shall cooperate with each other in collocating WTFs and shall exercise good faith in collocating with other licensed carriers and in the sharing of sites, including the

sharing of technical information necessary to evaluate the feasibility of collocation. In the event a dispute arises as to a collocation issue, the City may require a third-party technical study to evaluate the feasibility of collocating at the expense of either or both wireless telecommunications providers;

- (c) All new Towers and any pre-existing Tower owned by a wireless telecommunications provider shall be made available for use by the owner or initial user thereof, together with as many other licensed carriers as can be technically located thereon;
- (d) If determined by the City, all new Towers shall be designed and constructed in such a manner as to accommodate at least one other comparable WTF in addition to the applicants;
- (e) All new wireless telecommunications Towers that are less than one hundred (100) feet shall be designed and constructed in a manner that allows such Tower to be expanded to a height of one hundred (100) feet in order to allow for future collocation.

Subd. 11. Exceptions to Collocation. The City may waive any or all the collocation requirements if it is determined that:

- (a) The planned WTF would exceed the structural capacity of the existing or approved Tower, building or structure, as documented by a qualified and licensed professional engineer, and the existing or approved Tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment.
- (b) The planned WTF would cause interference materially impacting the usability of other existing or planned WTFs at the structure as documented by a qualified radio frequency engineer selected by the City and the interference cannot be prevented.
- (c) No existing Tower, building or structure within an applicant's search radius can or will accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer selected by the City.

#### 1311.05 Permitted Special Uses.

Subd. 1. General. All Towers and WTFs shall be permitted only if a special use permit has been issued for that use by the City Council. The following provision shall govern the issuance of special use permits for Towers or WTFs by the City Council:

- (a) Applications for special use permits under this Section shall be subject to the procedures and requirements of Section 1320 of this Code, except as modified by this Section.
- (b) In granting a special use permit, the City Council may impose conditions to the extent necessary to minimize any adverse effect of the proposed Tower or WTF on adjoining properties.
- (c) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
- (d) An applicant for a special use permit shall submit the information described in this Section and a non-refundable fee as established by resolution of the City Council to reimburse the City for costs of reviewing the application.

Subd. 2. Towers. In addition to any information required for applications for special use permits pursuant to Section 1320 of this Code, applicants for a special use permit for a Tower shall submit the following information:

- (a) A scaled site plan clearly indicating the location, type and height of the proposed Tower, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed Tower and any other structures, topography, parking and other information deemed by the City Staff to be necessary to assess compliance with this Section.
- (b) The legal description of the property on which the proposed Tower is to be constructed.
- (c) The setback distance between the proposed Tower and the nearest residential property.
- (d) The separation distance from other Towers and, if known, the type of construction of the existing Tower(s) and the identity of the owner(s)/operator(s) of the existing Tower(s).
- (e) A landscape plan showing specific landscape materials.
- (f) Method of fencing, and finished color and, if applicable, the method of camouflage.
- (g) A statement of compliance with all applicable federal, state or local laws.

- (h) A notarized statement by the applicant as to whether construction of the Tower will accommodate collocation of additional Antennas for future users.
- (i) A description of the suitability of the use of existing Towers, other structures or alternative technology not requiring the use of a Tower or new structure to provide services to be provided through the use of the proposed new Tower.
- (j) A description of the feasible location(s) of future Towers or WTFs within the City based upon existing physical, engineering, technological or geographical limitations in the event the proposed Tower is erected.

Subd. 3. Factors considered in granting special use permits for Towers. In addition to any standards for consideration of a special use permit, applications pursuant to Section 1320 of this Code, the City Council shall consider the following factors in determining whether to issue a special use permit, no one of which shall be conclusive, although the City Council may waive or reduce the burden on the applicant of one or more of these criteria if City Staff or City Council concludes that the goals of this chapter are better served thereby:

- (a) Height of the proposed Tower;
- (b) Proximity of the Tower to residential structures and residential district boundaries;
- (c) Nature of uses on adjacent and nearby properties;
- (d) Surrounding topography;
- (e) Surrounding tree coverage and foliage;
- (f) Design of the Tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (g) Proposed ingress and egress;
- (h) Availability of suitable existing Towers, other structures, or alternative technologies not requiring the use of Towers or structures.

Subd. 4. No new Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City Council, that there is no existing Tower, structure or alternative technology not requiring a Tower or structure, that can accommodate the applicant's proposed WTF or Tower. An applicant shall submit information requested by the City Council related to the availability of suitable

existing Towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing Tower, structure or alternative technology can accommodate the applicant's proposed WTF may consist of any of the following:

- (a) No existing Tower or structure is located within the geographic area that meets applicant's engineering requirements.
- (b) Existing Towers or structures are not of sufficient height to meet the applicant's engineering requirements.
- (c) Existing Towers or structures do not have sufficient structural strength to support the applicant's proposed WTF and related equipment.
- (d) The applicant's proposed WTF would cause electromagnetic interference with one or more WTFs on existing Towers or structures, or a WTF on the existing Towers or structures would cause interference with the applicant's proposed WTF.
- (e) The fees, costs, or contractual provisions required by the owner in order to share an existing Tower or structure or to adapt an existing Tower or structures for sharing are unreasonable. Costs exceeding new Tower development are presumed to be unreasonable.
- (f) The applicant demonstrates that there are other limiting factors that render existing Towers and structures unsuitable.
- (g) The applicant demonstrates that an alternative technology that does not require the use of Towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new Tower or Antenna development shall not be presumed to render the technology unsuitable.

Subd. 5. Separation. All Towers for which a special use permit is required shall be separated by a minimum of seven hundred fifty (750) feet between the proposed Tower and any pre-existing Tower; provided, however, that the City Council, after considering any recommendations of City Staff, may reduce the standard separation requirements if the purposes of this Section would be better served thereby. The separation distance shall be measured by drawing or following a straight line between the base of the existing Tower and the proposed base, pursuant to a site plan, of the proposed Tower.

#### 1311.06 Applications for Towers and WTFs.

Subd. 1. Application. In addition to an applicant's name, address, proposed site for a WTF Antenna or Tower, site plan, grading and landscaping plans, written

permission of the property owner, and other such similar information, an application for a special use permit, building or other permit relating to the installation or construction of a WTF or Tower, the applicant shall include the following:

- (a) A statement indicating that failure to comply with the conditions of approval shall result in the revocation of the permit and removal of the WTF and/or Tower.
- (b) A statement indicating that the expenses incurred by the City to enforce the provisions of the permit shall be reimbursed by the applicant.
- (c) A statement which requires the applicant to utilize the procedures established by the Federal Communications Commission to resolve any complaints received relating to interference allegedly caused by the facility.
- (d) A statement indicating the applicant will cooperate in good faith and fair dealing in collocating WTFs.
- (e) A statement indicating that the WTF or Tower will be maintained in good and safe condition and its original appearance and concealment, disguise or camouflage elements incorporated into the design at the time of approval shall be preserved. Such maintenance shall include, but is not limited to, painting, repair of equipment, and maintenance of landscaping.
- (f) A statement authorizing the City to enter the property for the purpose of periodic inspections to determine that the site complies with the provisions of this Section, any conditions of approval and all safety and building codes and permits issued. This statement shall give the City the right to conduct such inspections at any time upon reasonable notice to the property owner(s), and that all expenses related to such inspections shall be borne by the applicant.
- (g) A statement indicating that the applicant understands that a Tower or WTF which has not been used for twelve (12) successive months shall be deemed abandoned and may, at the sole discretion of the City, be required to be removed in the same manner and pursuant to the same procedures as for dangerous or unsafe structures established by Minnesota Statutes, Section 463.16.
- (h) A written acknowledgement of the property owner indicating that the removal or any unused or abandoned Tower or WTF or portions of any such Towers or WTFs are ultimately the responsibility of the property owner.

- (i) A statement requiring the applicant to notify the City that the WTF continues to be in operation. The notice of continuing operation shall be hand delivered or sent to the City Administrator annually by certified mail during the last two weeks of the month of December.

Subd. 2. Assessments. In the event the City incurs charges relating to the enforcement of this Section, including without limitation expenses relating to third-party consultants and removal of abandoned Towers and WTFs, the City reserves the right to assess the property owner for such charges in the same manner in which the City assesses and collects real property taxes.

#### 1311.07 Nonconforming Uses.

Subd. 1. Collocation of Additional Antennas. Antennas that are collocated, in accordance with the provisions of this Section, shall not be deemed to constitute the expansion of a nonconforming use or structure.

Subd. 2. Preexisting Towers. Preexisting Towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such preexisting Towers. New construction other than routine maintenance on a preexisting Tower shall comply with the requirements of this Section.

Subd. 3. Rebuilding damaged or destroyed nonconforming Towers or Antennas. A nonconforming Tower, Antenna or WTF that is damaged or destroyed by wind, storm, fire or similar acts of God may be rebuilt without having to first obtain a special use permit. The type, height and location of the Tower or WTF shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the Tower or Antenna shall be deemed abandoned as specified in Section 1311.08.

Subd. 4. Nonconforming Use/Abandonment. A nonconforming Tower or WTF that becomes nonfunctional for thirty (30) consecutive days shall be deemed abandoned.

1311.08 Removal of Abandoned Towers and WTFs. Any Tower or WTF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such Tower or WTF shall remove the same within ninety (90) days of receipt of notice from the City of such abandonment. Failure to remove an abandoned Tower or WTF within such 90-day period shall be grounds for the City to remove the Tower or WTF at the property owner's expense. If there are two or more users of a single Tower, then this provision shall not become effective until all users cease using the Tower for a continuous period of twelve (12) months.

1311.09 Variances. No new Tower or WTF may be built or may any existing Tower or WTF be altered, extended, restored or enlarged in such a way that it does not conform with the provisions of this ordinance except as otherwise provided in Section 1315 of this code relating to variances.

**Section 2. Effective Date.** This Ordinance shall be effective as of its date of publication.

Adopted by the Deephaven City Council on November 21, 2005, and published in the Lakeshore Weekly on November 29, 2005

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Tom Anderson, Mayor

ATTEST:

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Dana Young, City Administrator