

CHAPTER V ZONING, LAND USE AND BUILDING REGULATIONS

THIS IS A DRAFT AMENDMENT TO ORDINANCE 55 TO BE PROPOSED AT THE DECEMBER 18, 2017  
WAITE PARK CITY COUNCIL MEETING.

ORDINANCE 55 TELECOMMUNICATION FREESTANDING TOWER REGULATION

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ORDINANCE 55 TELECOMMUNICATION FREESTANDING TOWER REGULATION  
ORDINANCE

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**Section 55.1. Purpose.** This Ordinance's purpose is to accommodate the communication needs of residents and businesses while protecting public health, safety and general welfare. The City finds these regulations are necessary to:

**Subd. 1.** Facilitate wireless communication services to residents and businesses;

**Subd. 2.** Minimize adverse visual effects of towers through careful design and site standards;

**Subd. 3.** Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and

**Subd. 4.** Maximize the use of existing and approved towers and buildings to accommodate new wireless communication antennas and reduce the number of towers needed to serve the community.

**Section 55.2. Definitions.** The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

**Subd. 1. Antenna.** Any structure or device used to collect or transmit electrical magnetic waves, including but not limited to directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whip antennas.

**Subd. 2. Commercial Wireless Telecommunication Services.** Licensed commercial wireless telecommunication services, including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

**Subd. 3. Public Utility.** Persons, corporations, governments or other entities supplying gas, electric, transportation, water, sewer, cable, land lying telephone service to the general public. Commercial wireless communication service facilities shall not be considered public utility uses under this Ordinance, ***with the exception of small-cell wireless antenna providers registered as public utilities and permitted subject to Ordinance 33 and Ordinance 55.13,*** and are defined separately.

**Subd. 4. Tower.** Any free-standing ground or roof-mounted pole, spire, structure or a combination thereof taller than fifteen (15) feet, including supporting lines, cables, wires, braces, and masks, not wholly contained within a building or other structure, intended primarily for the mounting of an antenna, meteorologic device, or similar apparatus above grade except as defined in Subd. 11.

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**Subd. 5. Multi-User Towers.** A Tower with the antennas of more than one Commercial Wireless Telecommunications Service provider or governmental entity attached.

**Subd. 6. Single-User Towers.** A Tower with only the antennas of a single user attached, although the Tower may be designed to accommodate antennas of multiple users as required by this Ordinance.

**Subd. 7. Amateur Radio and Television Towers.** A Tower located on the same property as the radio used exclusively for transmission and reception by an amateur radio operator, or for residential television reception that does not exceed fifty (50) feet in height.

**Subd. 8. Exempted Dish.** A satellite or microwave dish that is two (2) meters or less in diameter used to receive signals exclusively for the occupants of the property where the dish is located.

**Subd. 9. Accessory Utility Buildings.** All utility buildings and structures accessory to a Tower.

**Subd. 10. Building Mounted Antenna.** A wireless communications antenna mounted on or attached to an existing building's roof or wall.

**Subd. 11. Commercial Towers.** A Tower designed or used for Commercial Wireless Telecommunications Services, public radio transmission or commercial television transmission.

***Subd. 12. Small-Cell Wireless Facilities. Any wireless antenna(s) and support structure that are fifty (50) feet or less in height and are located within the public right-of-way subject to City Ordinance 33, "Right-Of- Way" and meet State of MN definitions. Such facilities are generally excepted from the provisions of this ordinance and are subject to the provisions of Section 53.13.***

**Section 55.3. Permitted Zoning Districts.** The construction and maintenance of a Commercial Tower shall be permitted within the following zoning classifications, pursuant to a conditional use permit granted pursuant to the Zoning Ordinance. Amateur radio, television towers and exempted dishes shall not require a conditional use permit.

**Subd. 1. Industrial Districts.** All permitted Towers and antennas.

**Subd. 2. Agricultural/Rural Residential Districts.** All permitted Towers and antennas.

**Subd. 3. General Business.** Building Mounted Antennas, Exempted Dishes and antennas not attached to a Tower.

Section 55.3. Amended 7/15/13

**Section 55.4. General Performance Standards.** All Towers shall meet the following performance standards.

**Subd. 1. Multi-User Requirements.** The City shall not approve a proposal for a new Commercial Wireless Telecommunication Services Tower unless the City finds that the

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telecommunications equipment plans for the proposed Tower cannot be accommodated by an existing or approved Tower or building within a one-half (1/2) mile search radius of the proposed Tower due to one or more of the following reasons:

- A. The planned equipment would exceed the structural capacity of the existing or approved Tower, as documented by a qualified and licensed professional engineer, and the existing or approved Tower cannot be re-enforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
- B. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower as documented by a qualified and licensed professional engineer, and the interference cannot be prevented at a reasonable cost.
- C. Existing or approved Towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
- D. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved Tower or building.

Any proposed Commercial Wireless Telecommunication Service Tower shall be designed (structurally and electronically) in all respects, to accommodate both the applicant's antennas and comparable antennas for at least one additional user if the tower is less than one-hundred twenty five feet (125) and two (2) additional users if the Tower is over one hundred twenty-five feet (125') in height. The Tower must be designed to allow for future re-arrangement of antennas upon the Tower and to accept antennas mounted at various heights.

Section 55.4. Subd. 1. D. Amended 7/15/13

**Subd. 2. Tower and Antenna Design Requirements.** Towers and antennas shall be designed to blend into the surrounding environment through the use of materials, textures, color and camouflaging architectural treatment except where federal or state authorities such as the Federal Aviation Administration. Commercial Wireless Telecommunication Service Towers shall be of a monopole design unless the City determines that an alternative design would better blend in with the surrounding environment or allow for greater future multi-use.

**Subd. 3. Landscaping and Screening.** The City shall establish, as a condition to approving a Commercial Tower, reasonable requirements relating to landscaping and screening to improve the aesthetic appearance of the Tower's base and accessory buildings. Existing on-site vegetation should be preserved to the maximum extent possible.

**Subd. 4. Fencing.** All Commercial Towers and accessory buildings shall be enclosed within an aesthetically acceptable fence with a locked gate to prevent unauthorized entry. The fence shall be between eight (8) and ten (10) feet in height.

**Subd. 5. Construction Standards.** All Towers shall be constructed and maintained according to the Electronic Industry Association Standards and all applicable building codes.

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**Subd. 6. Minimum Spacing.** Commercial Tower locations shall be at least one-fourth mile apart. Antennas wholly contained within a building or other structure and not visible to the general public shall be exempt from this spacing regulation.

**Subd. 7. Licenses.** Proposals to erect any new Tower shall be accompanied by any required federal, state or local agency licenses or proof of application for them.

**Section 55.5. Tower Setbacks.** All Towers shall conform with the following minimum setback requirements:

**Subd. 1.** All Towers, as defined in Section 55.2, Subd 4, shall be set back from property lines a minimum of 125 percent of the Tower's height, including all antennas and attachments. The Tower's height shall be measured from the average grade of the property on which it is located or the actual tower height, whichever is greater.

Section 55.5 Subd. 1. Amended 7/15/13

**Subd. 2.** Accessory Utility Buildings shall comply with the setback requirements of the zone where the tower is located.

**Subd. 3.** Commercial Towers within permitted districts shall be set back a minimum of twenty (20) feet from property line and a minimum of three-hundred (300) feet from any property zoned for residential use.

Section 55.5 Subd. 3. Amended 7/15/13

**Subd. 4.** The City may reduce or vary a Tower setback if the variance will facilitate the Tower's integration into an existing or proposed structure, such as a church steeple, light standards, power line support device or similar structure.

**Subd. 5.** No part of a Tower, antenna, support structure, lines, cables, equipment, wires or braces shall extend across or over any part of a right-of-way, public street, highway or sidewalk unless the City expressly approves.

**Section 55.6. Tower Lighting.** A Tower 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 state or federal authority for a particular Tower. When incorporated into the design standards, the Tower's light fixtures to illuminate ball fields, parking lots or similar areas may be attached to the tower.

**Section 55.7. Signs and Advertising.** A Tower shall not have any advertising or other sign or neon sign attached to it except a warning or equipment informational sign.

**Section 55.8. Abandoned or Unused Telecommunication Towers.** Abandoned, unused telecommunications Towers or portions of telecommunications Towers shall be removed as follows:

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**Subd. 1.** All abandoned, unused Towers and associated facilities shall be removed within twelve (12) months of the cessation of operations at the site unless the City approves a time extension. If the Tower is not removed within twelve (12) months of cessation of operations at the site, the City may remove the associated facilities and assess the removal costs against the property.

Section 55.8 Subd. 1. Amended 7/15/13

**Subd. 2.** Any unused portions of Towers above a manufactured connection shall be removed within six (6) months after antenna relocation. The replacement of portions of a Tower previously removed requires the issuance of a new conditional use permit.

**Section 55.9. Interference of Public Safety Communications.** No new or existing telecommunication service shall interfere with public safety communications. All applications for a conditional use permit for new service shall be accompanied by an intermodulation study that provides the technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of a new service or change in existing service, telecommunication providers shall notify the City at least ten (10) calendar days in advance of such changes and allow the City to monitor interference levels during the testing process.

**Section 55.10. Conditional Use Application Submittal.** In addition to the information generally required to accompany a request for a conditional use permit found in the Zoning Ordinance, conditional use permit applications for Towers shall include the following supplemental information:

**Subd. 1.** A report from a qualified and licensed engineer which:

- A. Describes the Tower height and design, including a cross section and elevation.
- B. Documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distance between antennas;
- C. Describes the Tower's capacity, including the number and type of antennas it can accommodate.
- D. Describes steps the applicant will take to avoid interference with established public safety communication.
- E. Includes the engineer's stamp and registration number.
- F. Includes other information necessary to evaluate the request.

**Subd. 2.** A letter of intent committing the Tower owner, and successors, to allow the Tower's shared use if any additional user agrees in writing to meet reasonable terms and conditions for shared use.

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**Subd. 3.** Proof that the proposed Tower complies with all Federal Aviation Administration regulations.

**Subd. 4.** A report from a qualified and licensed professional engineer which demonstrates the Tower's compliance with all applicable structural and electrical standards, including all antenna and support structures.

**Subd. 5.** A site plan showing the boundaries of the property where the Tower is located, adjacent land uses, the tower's location and any accessory buildings within the property, distance setbacks from property lines for the tower and accessory buildings, fence locations, and proposed landscaping or screening.

**Section 55.11. Building Mounted Antennas.** The City shall approve the placement of wireless telecommunication antennas on roofs or walls of existing buildings or structures as an interim or conditional use depending on the zoning district, if the antennas meet the requirements of this Ordinance. A site plan and building plan are required along with a report prepared by a qualified licensed professional engineer indicating the existing building structure is suitable to accept the antenna and propose method for affixing the antenna to the structure. Complete details of all fixtures, couplings and the precise attachment point shall also be included.

Section 55.11. Amended 7/15/13

**Section 55.12. Amateur Radio Towers.** Amateur Radio and Television Towers and antennas are subject to the standards and conditions established by this Ordinance, except for those specific to Commercial Towers. The City may waive strict compliance with this Ordinance if it finds this Ordinance's stated purpose is met.

**Section 55.13 Small Cell Wireless Facilities.**

- A. *Small cell wireless facilities and antenna support structures shall require a Conditional Use Permit when located in the right-of-way adjacent to any residentially-zoned parcel, Planned Unit Development (PUD) project which includes residential dwellings, or other residential use. The CUP shall be reviewed pursuant to the provisions of Waite Park Ordinance 33, Waite Park Ordinance Sections 52.51.02 and 55.10, and any other relevant restrictions. No Conditional Use Permit shall be granted for any such facility that creates a substantial burden on the adjoining residential area or the public right-of-way in which it is proposed for location or which does not comply with standards of Ordinance 33.*
- B. *All small-cell facilities located within public right-of-way shall meet the dimensional criteria established by State law.*
- C. *No small-cell support structure shall exceed fifty (50) feet in height above the finished grade of the ground on which the structure is located.*

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- D. Notwithstanding Subd. B., the City may approve small-cell facilities taller than fifty (50) feet by Conditional Use Permit in rights-of-way adjacent to non-residential property when the City finds that such approval will have specific and substantial public benefits, including but not limited to reduction in the overall number or visual impacts of such facilities in the public right-of-way*
- E. Small-cell facilities proposed to be co-located on an existing support structure(s), such as parking lot light poles, may be allowed as permitted uses provided no portion of the existing support structure or proposed antenna will exceed the allowable height for such structures in the zoning district in which the property is located, and that the property is not a residentially-zoned parcel, Planned Unit Development (PUD) project which includes residential dwellings, or other residential use.*
- F. Any small-cell facility, associated antenna or support structure located outside of the public right-of-way, such as on private property, regardless of ownership, and which would exceed the allowable height for the support structure in the zoning district of the subject property, shall require a Conditional Use Permit and be subject to all other general provisions of Ordinance 55, as well as any other applicable zoning or City Code restrictions or requirements.*

**Section 55.134. Penalties.** A violation of this ordinance shall constitute a misdemeanor. Each calendar day of a continued violation of the ordinance shall constitute an individual misdemeanor or offense.

Updated 7/15/13