

COUNCIL ACTION FORM

SUBJECT: WIRELESS COMMUNICATIONS FACILITIES TEXT AMENDMENT

BACKGROUND:

The operation of wireless communication facilities are licensed and regulated by the Federal Communications Commission (FCC). The principal law regarding regulation of personal wireless services is the Telecommunications Act of 1996, which among others things, sets forth the policy of the federal government to promote deployment of personal wireless services. To date, local authority regarding the siting of new wireless facilities has been preserved when a local government does not act as a barrier to providing wireless service consistent with the intent and provisions of the 1996 Telecommunications Act. However, **in the past two years, a city's ability to regulate construction of wireless transmission facilities and the manner in which a city permits alterations of existing wireless facilities has come under state regulation that further limits local authority. Due to these recent changes, modifications to the City's standards and process for review of wireless facilities are needed.**

In 2015, the federal government and Iowa legislature independently adopted new rules and legislation relating to how cities can regulate wireless transmission facilities. In summary of the two Iowa Code changes, **a city can no longer consider issues of technology or business needs (e.g. proposed location or coverage objectives) for a new wireless tower.** The laws also allow for modifications to existing facilities that are not substantial changes as defined by state law. Small wireless facilities as defined by state law that are within the right-of-way or on public structures are to be approved with administrative review when they are similar in size and appearance to other utility poles and structures. The state law changes also allow for placement of any type of wireless telecommunications equipment, not just personal wireless, as addressed by federal law. Additionally, cities must act in specified time periods, otherwise an application will be deemed approved.

To address the recent changes in state law, staff has drafted new standards for the City's wireless communication facility standards of Section 29.1307 of the Ames Municipal Code. The proposed changes principally address definitions and the approval process for wireless facilities with some changes to development standards. Due to the 2017 changes concerning permits in the right-of-way, staff also recommends that the Zoning Ordinance standards do not apply to the right-of-way and that the City establish separate processes and standards for right-of-way within Chapter 22A (Rights of Way) of the Municipal Code. Chapter 22A amendments would occur subsequent to the Zoning Ordinance changes.

Ames allows for wireless telecommunication facilities in all zoning districts and the current zoning ordinance does not distinguish between locations in the right-of-way and private property. New towers are also allowed in all zoning districts subject to approval of a Special Use Permit by the Zoning Board of Adjustment, based upon the height of the tower exceeding 50 feet. Most commonly, new towers in the past five years in Ames have been between 120 and 150 feet in height and can host two to three wireless service providers. In specialty situations, towers may be lower in height and host only one carrier due to site size and setbacks. Alterations to existing facilities or co-location on existing structures are administrative staff approvals provided that the alteration to a tower is minor in nature. For example, placing wireless equipment on a water tower that already exceeds 50 feet in height does not trigger a special use permit review nor does placing an additional carrier's equipment on an existing tower.

The City's current ordinance was adopted in 2000 and was based on the premise of supporting deployment of wireless services through a preference for co-location of wireless antennas on existing facilities and to minimize the number of new towers built in the city. Part of the criteria for a new tower was to consider the need for the service and if it was feasible to co-locate the facility in lieu of building a new tower. **The basic standards for siting a tower are setbacks based upon height, screening of ground equipment, monopole construction, and no inference with airport operations. In large part, these standards are maintained in the proposed new ordinance, except for the ability to consider other co-location opportunities before constructing new towers.**

Development standards modified with the proposed text amendment are to require a setback of 50% of the tower height, rather than a minimum of 60 feet or 50% of the height, eliminate the parking requirement, and include a quarter mile separation standard if the design does not incorporate "stealth" aesthetic treatments. A new section has been created to allow for temporary installations that do not trigger full site improvement standards. Staff has attached an addendum below that describes the changes being made to Section 29.1307. The complete draft ordinance is also attached.

PLANNING & ZONING COMMISSION RECOMMENDATION

At the January 17th Planning & Zoning Commission meeting the commission voted 4-0 to recommend approval of the proposed new standards for Wireless Communications Facilities with small wireless facility placement in rights-of-way addressed in Chapter 22A.

ALTERNATIVES:

1. The City Council can approve on first reading changes to Chapter 29 zoning standards for wireless communications facilities and direct the City Attorney to prepare amendment to Chapter 22A for wireless permitting standards within the right-of-way.

2. The City Council can approve alternative language governing standards for wireless communications facilities.
3. The City Council can request additional information from staff and defer action on this item.

CITY MANAGER'S RECOMMENDED ACTION:

Although the City already permitted and encouraged co-location with administrative review, the proposed changes are needed to fully comply with recent changes in state law. Staff believes that addressing right-of-way installation via Chapter 22A and addressing private property installation via Chapter 29.1307 provides the appropriate level of review to ensure compliance with requirements and to avoid confusion of setback and spacing requirements. The proposed changes to development standards are minor for new wireless towers and are designed to facilitate smaller tower designs with more compatible visual aesthetics.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1 which is to adopt new language governing wireless communications facilities within Chapter 29 and address right-of-way installation within Chapter 22A.

ADDENDUM

Proposed Text Amendments

To clarify the applicability of the state law changes, staff describes below the changes that are mandatory and as they related to rights-of-way and to private property sites. Staff has listed out what review procedures city can or must abide by based on whether a facility is proposed on private property or within public rights-of-way.

Wireless Facilities on Private Property

The city's ability to require a Special Use Permit for siting of a wireless facility on private property varies based on what is proposed as a new installation or modification. These points are highlights of when the city can require a Special Use Permit and when it cannot.

The city may require a Special Use Permit under state law when a wireless provider proposes to site a wireless facility in the following manner and are incorporated into the draft text amendment.

- A public structure that does not currently support wireless communications equipment such as a public building or a water tower.
- A new tower that exceeds 50 feet in height
- A new small wireless facility on private property in an exclusive single-family residential zone, such as RL, FS-RL, F-PRD, Village, or Historic District.
- Co-locating a small wireless facility in a zone that is exclusively single-family residential, such as RL, FS-RL, F-PRD, Village, or Historic District.
- When co-locating with an existing wireless facility or support structure causing a change to the height or size of the structure by more than 10% or 20 feet (whichever is greater).

The city cannot require a Special Use Permit when a wireless provider proposes to site a wireless facility in the following manner:

- Locating a small wireless communications facility on a public structure that already supports wireless communications equipment.
- A new wireless communications structure that is less than 50 feet in height (optional standard).
- When co-locating a small wireless facility with existing wireless communications equipment in any zone that is not exclusively single family residential zone, such as the RL, FS-RL, F-PRD, Village, or a Historic District.
- When co-locating with an existing wireless facility or support structure causing a change to the height or size of the structure by less than 10% or 20 feet (whichever is greater).

Wireless Facilities in the Public Right-of-Way

The current zoning standards do not differentiate tower standards between rights-of-way and private property. The new state laws address specific requirements in relation to rights-of-way and utility poles. It is important to note that state law includes an expansive definition of Utility Pole to include almost any type of existing pole in the right of way or any new pole that is similar to a pole within 500 feet of the new pole. The placement of wireless facilities in public right-of-way is generally limited to "small

wireless facilities” as defined by state law, antennas less than six cubic feet and equipment less than 28 cubic feet. Staff proposes that the standards for review and approval of small wireless facilities in the right-of-way be moved to Chapter 22A of the Municipal Code and out of the Zoning Ordinance for ease of administration by staff.

The city may require a Special Use Permit for the siting of a wireless facility within public right-of-way in the following manner:

- When siting small wireless communications equipment in the public right-of-way in an exclusive single family residential zone, such as RL, FS-RL, F-PRD, Village, or Historic District (optional standard).
- Changes to existing towers or utility poles that are substantial changes or do not meet the definition of a small wireless facility (optional).

The city cannot require a Special Use Permit for the siting of a small wireless facility within public rights of way in the following manner:

- Placement of wireless communications equipment on existing utility poles that are not a substantial change.
- Placement of small wireless communications equipment (including support structure of a new utility pole) within the public right-of-way in any zone that is not exclusively single family residential zone, such as the RL, FS-RL, F-PRD, Village, or a Historic District.

Changes to Wireless Facility Review Processes and Development standards

The proposed zoning text amendment includes revisions to the definitions, approval standards and the application process. These revisions have been written with recent legislative changes in mind.

Applications

Staff has defined a new application process to distinguish between obtaining a Special Use Permit from the Zoning Board of Adjustment and those that may be administratively approved. The design standards will be the same for each permit, but the Special Use Permit general criteria will not apply to the administrative wireless permits. The primary threshold for determining a special use permit or administrative approval is the 50-foot tall tower height or if the facility is a co-location or small wireless facility. Staff recommends adding a requirement for visual simulations for new towers to accompany required site plan and architectural plans. All applications for Special Use Permits for new towers must be considered within 150 days of submission. Any application for a substantial change on an existing tower must be acted upon within 90 days of submission. Small Wireless facility applications must also be acted upon within 90 days of submission.

Staff recommends creating an application to address temporary cell site installations that would last for less than six months. Requests for temporary installations are usually associated with events, such as football games, where additional capacity is needed but not justified for a long term investment. Temporary towers would be exempt from most other standards and only subject to Zoning Board of Adjustment Special Use Permit approval if such towers exceed 50 feet in height. Staff is also proposing that temporary

towers be prohibited in all residential zones.

Separation & Design

The standards for co-location preference have been deleted as necessitated for conformance to state law. The proposed text amendment does contain a new provision which establishes a separation requirement between towers of a minimum of one quarter mile with an exception for towers designed to be architecturally compatible with its surroundings or a stealth design. Design options such as bell towers, trees or other aesthetically pleasing architectural features help camouflage the appearance of a tower and can thus be considered as having much less visual disruption to the area. The separation standard does not apply to facilities located in the right-of-way.

Staff recommends adjusting the setback standard for new towers. Staff recommends deleting the 60-foot minimum requirement and rely solely upon the 50% of the tower height standard. Staff believes this change would act as a small incentive to construct lower height towers since the setback would then be less for lower height towers.

Staff recommends deleting the requirement for a paved parking space with each facility. The proposed design cannot interfere with other required parking on a site. Access to facility must meet paving requirements unless approved by the Zoning Board of Adjustment with a Special Use Permit. This change allows for consideration of the need for paved access and parking for remotely located sites and minimize site disturbance.

Painting & Visual Aesthetics

The proposed standards outline methods that are meant to encourage compatible visual aesthetics and address the visual impact of large towers in prominent locations. Towers shall maintain a galvanized steel finish of gray or white. The base station related to support structures and towers shall be screened with material consisting of colors, textures and landscaping that blend them into the natural surroundings. Conduit or cable must be concealed on towers. The proposed standards emphasize consideration of stealth techniques and flush mount systems adjacent to residential uses, prominent commercial areas and entryways into the City.

Monopole designs are permitted throughout the City for new towers. Lattice or guyed wire towers are prohibited unless located within industrial zoning districts.

ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING CHAPTER 29, ARTICLE 13, SECTION 13.307 AND ENACTING A NEW CHAPTER 29, ARTICLE 13, SECTION 13.307 THEREOF, FOR THE PURPOSE OF WIRELESS COMMUNICATIONS FACILITIES; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT, PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by repealing Chapter 29, Article 13, Section 13.307 and enacting a new Chapter 29, Article 13, Section 13.307 as follows;

“Sec. 29.1307. WIRELESS COMMUNICATIONS FACILITIES.

(1) **Scope, Purpose, and Policy.** The provisions of this Section apply to, and apply only to, the placement, construction and modification of that which is called a "wireless communications facility". It is the intent of this ordinance to uphold the provisions of Section 704 of the Telecommunications Act of 1996 and Iowa Code Chapter 8C. It is the intent of this Ordinance not to discriminate unreasonably among providers of functionally equivalent services and not to have the effect of prohibiting the provision of wireless services. Any request for authorization to place, construct, or modify personal wireless communications facilities shall be acted on within a reasonable time after the request is duly filed with the proper city office, taking into account the scope and nature of such request. Any decision to deny a request to place, construct or modify wireless communications facility shall be in writing and supported by substantial evidence contained in a written record.

(2) **Definitions.** For the purpose of this Section, the following definitions shall apply:

(a) **Base Station** means any structure or equipment that enables communication between equipment and the network. Base Station includes but is not limited to equipment associated with wireless communications services such as private, broadcast, and public safety services and unlicensed wireless services and fixed wireless services such as microwave backhaul. Base Station includes but is not limited to radio transceivers, antennas, coaxial or fiber optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Base Station includes a structure other than a tower that, at the time the relevant application is filed with the state or local government, supports or houses equipment described in this subsection that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(b) **Cell Site** means a tract or parcel of land that contains the wireless communication antenna, its support structure, accessory building(s), and parking and may include other uses associated with and necessary for wireless communication transmission.

(c) **Collocation** means the mounting or installation of additional transmission equipment on a wireless support structure or tower already in use for the purpose of transmitting or receiving radio frequency signals for communications purposes.

(d) **Small Wireless Facility** means a wireless facility that is consistent with the terms of the State of Iowa Code Section 8C.2(12) and includes the following:

- (i) Each antennae is no more than 6 cubic feet in volume.
- (ii) All other equipment associated with the small wireless facility is cumulatively no more than twenty-eight cubic feet in volume.

(e) Substantial Change means an increase in height by more than twenty feet or 10% (whichever is greater) when the tower is located outside public right-of-way, protruding from the tower edge by more than twenty feet if outside the public right-of-way or by more than six feet if in the public right-of-way, excavating or defeating existing concealment elements.

(f) Tall Structure means any structure the top of which is more than 50 feet above grade.

(g) Temporary Tower(s) means a tower of any height and its base station that is in place no longer than 6 months at a given time. Such structures must be designed to be easily moved and transported within short periods of time.

(h) Tower means a structure built for the sole or primary purpose of supporting an antenna and the associated facilities authorized or licensed by the Federal Communications Commission. Tower includes structures constructed for wireless communications services, including but not limited to private, broadcast and public safety services and unlicensed wireless services and fixed wireless services, such as microwave backhaul, and the associated site.

(i) Transmission Equipment means equipment that facilitates transmission for a wireless communications service licensed or authorized by the Federal Communications Commission, including but not limited to radio transceivers, antennas, coaxial or fiber optic cable, and regular and backup power supply. Transmission equipment includes equipment associated with wireless communications services, including but not limited to private, broadcast, and public safety services, such as wireless local area network services and services utilizing a set of specifications developed by the institute of electrical and electronics engineers for interface between a wireless client and a base station or between two wireless clients, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

(j) Wireless Support Structure means a structure that exists at the time an application is submitted and is capable of supporting the attachment or installation of transmission equipment in compliance with applicable codes, including but not limited to water towers, buildings, and other structures, whether within or outside the public right-of-way. Wireless support structure does not include a tower or existing base station.

(3) **Wireless Permit Required.** A cell site with antenna that is attached to an existing communications tower, smoke stack, water tower, or other tall structure is permitted in all Zones. The alteration of the antenna shall not constitute a Substantial Change as defined in this ordinance

(4) **Special Use Permit Required.** A cell site with antenna that is either not mounted on an existing tall structure or constitutes a Substantial Change shall not be permitted except pursuant to a Special Use Permit issued by the Zoning Board of Adjustment pursuant to both Section 29.1503 and the provisions of this Section. Upon receipt of an application for construction of a new tower to the City, the Zoning Board of Adjustment has 150 days to act upon said application. If the application is for a substantial change of an existing structure the Zoning Board of adjustment has 90 days to act upon said application.

(5) **Additional On Site Activities.** Any other activity on a cell tower site not directly related to the operation of the tower and related tower equipment, such as additional business or non-essential storage, is prohibited unless approved pursuant to a special use permit.

(6) **Monopoles Required.** All towers shall be "monopole" except lattice or guyed towers may be approved in Industrial Zones.

(7) **Temporary Towers.** The following standards shall apply to all temporary tower placement:

(a) Temporary towers are prohibited in all residential zones.

(b) Financial Security must be submitted prior to approval of a temporary tower permit to ensure that upon removal of a temporary tower the site is returned to its original condition.

(c) Temporary towers are subject to both Special Use Permits and Wireless Permits depending on the height of the proposed temporary tower.

(8) **Cell Site Standards.** The following standards and procedures, in addition to those contained in Section 29.1503, shall apply to the issuance of a Wireless Permit and issuance of a Special Use Permit for a cell site with antenna:

(a) Tower Height. The applicant shall demonstrate, to the reasonable satisfaction of the Zoning Board of Adjustment that the antenna is the minimum height required to function satisfactorily. No antenna

or tower shall be constructed, altered, or maintained so as to project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection.

(b) Setbacks from Base of Tower. The minimum distance between the base of the support or any guy anchors and any property line shall be equal to 50% of the antenna height.

(c) Antenna Support Structure Safety. The applicant shall demonstrate, to the reasonable satisfaction of the Zoning Board of Adjustment that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris, or radio frequency interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

(d) Screening. Appropriate screening shall be installed composed of wood, masonry material or other substantial materials. Landscaping may also be required.

(e) Painting and Visual aesthetics. The design of towers, antennas and base stations should minimize the adverse visual impact of the facility through siting, landscape screening, and stealth techniques.

(i) Towers shall either maintain a galvanized steel finish (dull gray or white) or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness to the maximum extent possible.

(ii) The design of the base station and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

(iii) The wireless facility shall be designed to complement the physical landscape in which they are intended to be located. Examples of stealth techniques that may be compatible include but are not limited to faux trees, unipoles/slick sticks, bell towers, etc. New stealth towers shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape and adjacent properties. New freestanding structures shall be designed to be compatible with adjacent structures and landscapes with specific design considerations such as architectural designs, scale, color and texture.

(iv) Conduit or cable must be concealed on towers with externally mounted equipment.

(v) The use of internally mounted or flush mounted technology is encouraged when adjacent to residential areas, prominent commercial areas and prominent entryways to the city.

(f) Air Safety. Support structures 200 feet in height or taller, or those near airports, shall meet all Federal Aviation Administration regulations.

(g) Separation Requirements. Towers exceeding 50 feet in height, except those incorporating stealth techniques, shall be placed at minimum one quarter mile apart. Wireless facilities in rights-of-way are not subject to separation requirements.

(h) Access. All access to wireless communications sites must be hard surface (PCC or HMA) unless approved otherwise subject to a special use permit by the Zoning Board of Adjustment. Placement of a tower shall not affect the use or access to required parking of a principal use on site.

(9) **Special Use Permit Application Required.** Permits for new wireless communications facilities, substantial changes to existing wireless facilities and new small wireless facilities are reviewed and issued by the Zoning Board of Adjustment. This application shall require the applicant to submit the following items:

(a) Agreement with owner of the property if not owned by the applicant.

(b) Engineered drawings and specifications of the location, equipment to be installed and designed appearance of the facility.

(c) Property lines and setbacks of existing and proposed structures

(d) Rights of Way

- features.
- (e) Manufacturers spec sheet and photographs
 - (f) Architectural elevations drawn to scale with regard to appearance, screening and special features.
 - (g) Photographic visual simulation.
 - (h) Affidavit explaining reasons why co-location was not chosen.

(10) **Wireless Communications Permit Application Required.** An Application for co-location or a change that does not constitute a substantial change of a wireless communications facility shall be filed with staff for review prior to any issuance of a permit. This application shall require the applicant to submit the following items:

- a. Engineered drawings and specifications of the location, equipment to be installed and designed appearance of the modified facility.
- b. Property lines and setbacks of existing and proposed structures
- c. Rights of Way
- d. Manufacturers spec sheet and photographs
- e. Architectural elevations drawn to scale with regard to appearance, screening and special features.

(12) **Changes.** There shall be no change in the exterior appearance of a cell site, including any change in the profile of the tower, that is a departure from what was shown or represented in the approved Special Use Permit except as allowed by this ordinance.

(13) **Engineered Addition.** If an additional antenna is installed on an existing antenna support structure, engineering data and certification by a licensed professional engineer assuring that the installation is structurally sound within the standards of good engineering practice shall be provided to the City Building Official.

(14) **Removal.** If a cell site, or any antenna support structure, is not used for a period of one year, it shall be the duty and obligation of the party then in possession and control of the site to have the unused antenna support structure and any other unused cell site apparatus completely dismantled and removed from the site.”

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk

John A. Haila, Mayor