

## **Article 23: Telecommunications Towers**

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### **SECTION 23-1 TELECOMMUNICATIONS TOWERS; PERMITS**

**23-101.** Radio or television towers, communication towers, microwave transmitting and/or receiving towers and/or stations, radio antennas, commercial satellite earth stations and similar appurtenances may be allowed pursuant to issuance of a Conditional Use Permit, when such conditional use is provided for in the relevant district regulations, and subject to the following requirements:

- a. None of the conditional uses listed in this section shall be required to comply fully with the lot size and height regulations of the zoning district in which they are located except as may be required by the conditions imposed upon the applicant.
- b. Such structures must be set back from all adjacent property lines and streets a distance equal to not less than its height plus fifty (50) feet. The Zoning Administrator may approve a shorter distance reasonably necessary to protect adjoining property and public safety, or as otherwise required by Kan. Stat. Ann. 66-2019.
- c. Applicant must document that it analyzed available collocation opportunities on existing wireless support structures within the same search ring defined by the applicant.
- d. Any application for a proposed tower in excess of 150 feet in height shall include documentation regarding the necessity for the proposed height from a licensed professional engineer. Such documentation shall be in the form of an affidavit acceptable to the Planning Commission and signed by said engineer. At the request of the Planning Commission additional evidence in the form of testimony may be required from the engineer.
- e. The tower and accessory equipment must meet all applicable requirements of the Federal Aviation Administration. To the extent allowed by such requirements, any required lighting for such tower shall be red during time of darkness.
- f. The applicant must provide financial assurances, satisfactory to the City that all costs related to the requirements of these regulations will be met in compliance with Kan. Stat. Ann. 66-2019(f)(8).
- g. No permit shall be approved for a term of less than 10 years. Six months prior to the end of the term of the approved permit the Planning Commission shall hold a public hearing on the renewal of the permit, unless at such time the permit holder advises the Zoning Administrator, in writing, that a renewal of the permit is not desired. At such hearing the Planning Commission will make findings as to: (1) the permit holder's compliance with the terms and conditions of the permit; and (2) whether

any change in circumstance or condition relative to the tower and/or the surrounding neighborhood requires reconsideration of any of the factors for consideration set out at 23-801 of these regulations.

### **SECTION 23-2 FENCING AND SCREENING**

**23-201.** Security fences must be constructed around or upon parcels containing towers and similar structures. Screening is not required of towers.

### **SECTION 23-3 SETBACKS AND LANDSCAPING**

**23-301.** All landscaping on parcels containing towers or similar structures shall be in accordance with the applicable setback requirements in the zoning district where the tower or similar structures are located. Existing vegetation shall be maintained to the extent possible. Additional landscaping may be required as part of the Conditional Use Permit if doing so would make the tower or similar structures more compatible with the surrounding area.

### **SECTION 23-4 SECURITY**

**23-401.** All towers must be secured to protect against trespass or unauthorized use of the property, tower or similar structure.

### **SECTION 23-5 ACCESS**

**23-501.** All parcels upon which towers are located must provide access to at least two (2) vehicular parking spaces located within one hundred (100) feet of the tower.

### **SECTION 23-6 MAINTENANCE**

#### **23-601.**

- a. Permittees shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- b. Permittees shall install and maintain towers, telecommunications facilities, wire, cables, fixtures and other equipment in compliance with the requirements of the adopted electrical code of the City.
- c. All towers, telecommunications facilities and similar structures shall at all times be kept and maintained in good condition, order, and repair so as not to menace or endanger public health or safety.

### **SECTION 23-7 RESERVED**

### **SECTION 23-8 CONSIDERATION OF CONDITIONAL USE PERMIT**

#### **23-801.**

- a. Except as hereinafter otherwise provided, a Conditional Use Permit application for a telecommunications tower shall be subject to the same procedures for consideration and action as applies to any other Conditional Use Permit application pursuant to Article 26 of these regulations.
- b. In lieu of the factors for consideration of a Conditional Use Permit application under Article 26 of these regulations, the Planning Commission may recommend approval of a Conditional Use Permit, and the Governing Body may approve such permit for a telecommunications tower, using the following factors as guidelines:
  1. Whether approval of the conditional use would be consistent with the intent and purpose of, and meets the requirements of, these regulations;
  2. The aesthetic impact of the proposed telecommunications tower on the surrounding neighborhood;

3. Whether the positions of the applicant and/or the opponents are substantiated by substantial competent evidence, or rather generalized concerns or unsubstantiated claims are made to the Planning Commission and/or Governing Body;
  4. Whether a Federal Communications Commission (FCC) license has been granted to the applicant authorizing provision of wireless services to the community and whether radio frequency emissions will comply with FCC regulations;
  5. Whether the tower will adversely impact adjoining property values, present a hazard to air space, traffic, or in any other manner create negative impacts upon the neighborhood or community;
  6. The recommendation of professional planning staff;
  7. The expert testimony presented on behalf of and in opposition to the application; and
  8. Such other factors as may be relevant to the facts and evidence presented in the application.
- c. Consideration of an application for a Conditional Use Permit for a telecommunications tower shall be considered and acted upon by the Planning Commission and Governing Body in adherence to the limitations upon local authorities set out in Kan. Stat. Ann. 66-2019, the National Wireless Telecommunications Siting Policy, Section 332(c), 47 U.S.C. 332(c) and any other applicable law. Federal law provides in part that the regulation of the placement, construction and modification of personal wireless service facilities by a local government shall not unreasonably discriminate among providers of functionally equivalent services; and shall not prohibit nor have the effect of prohibiting the provision of personal wireless services. Further, the siting policy provides that a local government shall act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is duly filed, taking into account the nature and scope of such request. Further that any decision by a local government to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. And further that no local government may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions.

### **SECTION 23-9 FILING REQUIREMENT**

**23-901.** A permittee shall certify in writing, every three years, that its tower is structurally sound, and conforms to the requirements of the applicable state law and all other construction standards set forth by local, federal and state law by filing, by January 1st of every third year following the date of the grant of its tower permit, a sworn statement by the permittee to that effect. All permittees or owners of towers in existence on the effective date of these regulations shall submit a statement by January 1, 2017, and by January 1st every three (3) years thereafter that said tower is free from hazards and that the tower does not pose an imminent threat to the surrounding area or public health and safety. Together with this statement every permittee shall provide a certificate of liability insurance for not less than \$500,000.00 coverage for injury to persons or property as a result of any tower failure, malfunction or defect. Permittee shall list the Zoning Administrator as a party who must be notified should this insurance be canceled or discontinued for any reason, thirty (30) days before the expiration of coverage.

### **SECTION 23-10 REVOCATION OF PERMIT**

**23-1001.** The Governing Body may revoke a permit for failure to comply with the provisions of these regulations in accordance with the limitation upon the Governing Body as set out in Federal and State law. To properly revoke a permit, the Governing Body must comply with the procedures set forth below:

- a. The Governing Body shall provide permittee with written notice of a cause for revocation and the intent to revoke and shall allow permittee sixty (60) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance. Together with the notice required herein, the Governing Body shall provide permittee with written findings of fact that are the basis of the revocation.
- b. The Governing Body shall provide the permittee with the right to a public hearing before the Governing Body. Such public hearing shall follow sixty (60) days' notice. All interested parties shall be allowed an opportunity to be heard at the public hearing and present evidence.
- c. Within thirty (30) days after the public hearing date, the Governing Body shall issue a written order setting forth its findings of fact and conclusions of law forming the basis for its decision.
- d. Upon written determination by the Governing Body to revoke a permit, the permittee may appeal the decision to a court of competent jurisdiction.
- e. Upon permittee's failure to correct a violation, the Governing Body may issue an order to disconnect utilities to said tower to any utility company providing same. Said order shall not be issued prior to thirty (30) days from the date of the Governing Body's written determination. Said order shall be served upon the chief executive officer thereof, together with the permittee at the last known address, and have attached to it the findings of the Governing Body.

#### **SECTION 23-11 RESERVED**

#### **SECTION 23-12 ABANDONMENT OF TOWER**

##### **23-1201.**

- a. In the event the use of any tower has been discontinued for a period of one (1) year, or in the event that a permittee has taken no action within one-hundred eighty (180) days after the revocation of a tower permit, such tower shall be deemed abandoned.
- b. The Governing Body shall provide the tower owner three with (3) months notice and an opportunity to be heard by the Governing Body, before initiating an abandonment action.