

Model Ordinance *Wireless Telecommunications Tower*



This model ordinance combines the best of several ordinances that Scenic America reviewed in the process of assembling our publication *Taming Wireless Telecommunications Towers*.

This constitutes a bare-bones ordinance, rather than the sort of comprehensive policy document that should accompany every ordinance. Scenic America recommends that each community develop a thorough understanding of its communications needs and visual environment and develop a policy and ordinance to meet the former without compromising the latter.

The Federal Telecommunications Act of 1996 places some restrictions on the ability of communities to regulate wireless telecommunications facilities. Fortunately, the 1996 Act retains local control over many aspects of wireless facilities. [Section 601(c) of the Act specifically prevents the Act from any implied preemption over state or local law unless expressly so provided for in the Act.] The net effect of the Act is that communities:

- (1) cannot enact a blanket ban on all wireless facilities, but can place reasonable restrictions on facilities in certain zones or areas;
- (2) cannot unreasonably discriminate among equivalent service providers;
- (3) cannot regulate placement, construction and modification of wireless facilities on the basis of environmental effects, provided the facility complies with FCC emissions regulations. [Some courts have interpreted the Act to also preempt local regulation of health effects from wireless facilities, but the Act does not specifically preempt health issues, which are traditionally left to local control];
- (4) can exert reasonable control over tower aesthetics, including height restrictions, co-location, setbacks, and other design issues, and safety.

Federal telecommunications law also specifically preserves the rights of states to “protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.” 47 U.S.C. § 253(b).

Readers should also note that at least two states, Connecticut and Kentucky, decide tower siting issues at the state level. Accordingly, municipalities in those states must tailor their ordinances as needed.

Section 101.1. Statement of purpose and findings:

The City Council of the City of Our Town, West Missouri, hereby declares that the purposes of this section are to:

- A. establish standards for the siting of telecommunications towers and antennas;

- B. encourage the use of existing structures as an alternative to new tower construction;
- C. encourage the joint use of towers;
- D. encourage the design and construction of towers and antennae which minimize adverse visual impacts;
- E. ensure compliance of all telecommunications facilities with current federal, state, and local regulations;
- F. facilitate the provision of wireless telecommunications services; and
- G. prevent harm to the health, welfare, and visual environment of Our Town and its citizens.

Section 101.2. Requirements for facility permit submissions

In addition to any other materials required for a standard permit under this section or any other ordinance of the City of Ourtown, all applicants for permits to construct a telecommunications tower or antenna shall submit visual impact demonstrations using photo simulations of the proposed facility as it would be seen from residential areas, public rights of way, and public parks and other sites as deemed appropriate by the Planning Department.

Section 101.3. Location of facilities on or near historic structures, historic districts, and scenic corridors

Towers and antennae may be approved on or near historic structures and districts and designated scenic corridors by special exception and only if so concealed as to be substantially invisible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of telecommunications towers and antennae.

Section 101.4. Height Restrictions

- A. No new telecommunications facility shall exceed 100 feet in height. However, in the event of dense vegetation or other substantial obstacles to signal propagation, facilities can extend to a height of no more than 20 percent above the average tree canopy height within 1,000 feet of the proposed facility.
- B. Telecommunications facilities that simulate objects that typically occur in landscapes similar to the proposed location (except billboards, electrical transmission, or telecommunications towers) may exceed 100 feet in height if, based on the judgment of the City Planning Department, it would appear in

context on the landscape, is aesthetically acceptable, and would be a preferable alternative to an undisguised facility.

C. Telecommunications facilities located atop or within existing buildings or structures may result in an overall increase in height of the structure of no more than ten percent of the structure's height without the facility or the maximum height allowed in the zoning district in which the structure is located, whichever is less.

Section 101.5. Co-location

A. In all applications for construction of a new facility, the applicant must prove by substantial evidence that a bona fide need exists for the facility and that no reasonable combination of locations, techniques, or technologies will obviate the need. The applicant must further prove that it has made all reasonable efforts to procure antenna space on existing facilities and that the cost of co-location exceeds the cost of a new facility by at least fifty percent.

B. Prior to the issuance of a permit for a new tower, the applicant shall demonstrate commitment to joint use as follows.

1. The applicant requesting the permit shall submit evidence to the city demonstrating that a genuine effort has been made to solicit additional users for the proposed new tower. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless communications services within Bent County and adjacent counties, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen business days.

2. The applicant shall sign an instrument, maintained by the city, agreeing to encourage and promote the joint use of telecommunications towers within the city and, to that extent, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use.

Section 101.6 Setback

No new tower shall be constructed without a setback from the tower's base of at least 1.5 times the tower height to a public or private road and at least 2.5 times the tower height to the nearest property line.

Section 101.7 Equipment shelters.

No equipment shed for a telecommunications facility shall exceed 750 square feet in area nor 12 feet in height. All such sheds shall be screened with vegetation or other aesthetically pleasing materials. Furthermore, all such sheds shall be secured with approved fencing and a locked gate.

Section 101.8 Signs

No commercial messages nor any other signs beyond safety warnings and an identification sign of not greater than 6 square feet shall be placed on any tower or facility.

Section 101.9 Electronic emissions and electromagnetic radiation

A. Prior to commencing regular operation of the facility, all facility owners and operators must submit a certificate of compliance with all current Federal Communications Commission regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility.

B. All facility operators and owners must sign an agreement, to be maintained by the city, agreeing to bring facilities into compliance with any new federal, state, or local laws or regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility within 120 days of the effective date of the regulations.

Section 101.10 Removal of facilities

The owner of a facility shall establish a \$10,000 cash security fund or provide the City with an irrevocable letter of credit in the same amount to secure the cost of removing an antenna, antenna array, or tower that has been abandoned. In the event of a transfer of ownership, the seller shall be responsible for notifying the buyer of this requirement and for notifying the City of the transfer.

Notes

1. For more information on regulating wireless facilities, see the Scenic America publication *Taming Wireless Telecommunications Towers*, available via our web site at www.scenic.org.
2. One of the best local wireless policies and ordinances is that of Albemarle County, Virginia. The entire policy is available on the county's web site at: <http://www.albemarle.org/planning/WirelessPolicy.htm>.