515.21
Telecommunications Towers

Subdivision 1. Findings. The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over the regulation of the environmental effects of radio frequency emissions from telecommunications facilities and the regulation of radio signal interference among users of the radio frequency spectrum. By this section, the city intends to exercise the full scope of its authority under the Act and under state law regarding the regulation of towers and telecommunications facilities in the city. Consistent with the Act, the regulation of towers and telecommunications facilities in the city will not have the effect of prohibiting any person from providing wireless telecommunications services.

Subd. 2. Purpose. The general purpose of this subsection is to regulate the placement, construction and modification of telecommunication towers and facilities in order to protect the health, safety and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the city.

Specifically, the purposes of this subsection are:

a) To regulate the location of telecommunication towers and facilities.

b) To protect residential areas and land uses from potential adverse impacts of telecommunication towers and facilities.

c) To minimize adverse visual impacts of telecommunication towers and facilities through design, siting, landscaping, and innovative camouflaging techniques.

d) To promote and encourage shared use and co-location of telecommunication towers and antenna support structures.

e) To avoid potential damage to properties caused by telecommunication towers and facilities by ensuring that those structures are soundly and carefully designed, constructed, modified, maintained and promptly removed when no longer used or when determined to be structurally unsound.

f) To ensure that telecommunication towers and facilities are compatible with surrounding land uses.

g) To facilitate the provision of wireless telecommunications services to the residents and businesses of the city in an orderly fashion.

Subd. 3. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

a) "Antenna support structure" means any building, athletic field lighting, water tower, or other structure other than a tower, which can be used for location of telecommunications facilities as an accessory, subordinate use. New structures built for the purpose of attaching telecommunications facilities are “towers” not “antenna support structures” for the purpose of the code. For example, if an athletic field light pole would be replaced by a taller pole to facilitate installation of an antenna, then the new pole would be classified

as a “tower” not an “antenna support structure” even if lights would be mounted to it in a manner similar to the way they were mounted to the previous light pole.

b) "Applicant" means any person that applies for a tower development permit.

c) "Application" means the process by which the owner of a plot of land within the city submits a request to develop, construct, build, modify or erect a tower upon such land. Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by an applicant to the city concerning such a request.

d) "Engineer" means any engineer licensed by the state of Minnesota.

e) "Person" is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

f) "Stealth" means any telecommunications facility which is designed to blend into the surrounding environment. Examples of stealth facilities include architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunications towers designed to look other than a tower such as light poles, power poles, and trees.

g) "Telecommunications facilities" means any cables, wires, lines, wave guides, antennas and any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, the term “telecommunications facilities” shall not include any satellite earth station antenna 1 meter or less in diameter, or any satellite earth station antenna 2 meters in diameter or less which is located in an area zoned industrial or commercial.

h) "Telecommunications tower” or “Tower" means a self-supporting lattice, guyed or monopole structure constructed from grade which supports telecommunications facilities. The term tower shall not include amateur radio operations equipment licensed by the FCC.

Subd. 4. Development of Towers.

a) Permitted Use at Certain Locations in the I-1 District. A tower is a permitted use in the I-1 light industrial district, provided that the site also meets one of the following additional location criteria:

- It abuts the Canadian Pacific railroad property and also abuts Pennsylvania Avenue, 32nd Avenue or Nevada Avenue; or

- It is located within the area bounded by Corvallis Avenue, West Broadway, Douglas Drive, 56th Avenue, and Lakeland Avenue/Bottineau Boulevard.

A tower may not be constructed unless a site plan has been approved by the city council and a building permit has been issued by the building official. The applicant and property owner must submit a Special Land Use Application including the required application fee for a telecommunications tower in accordance with the fee schedule adopted by the city council, which shall include sufficient funds or the provision to draw

on sufficient funds with some form of collateral satisfactory to the city, to reimburse the city its reasonable expenses to review all aspects of the application for compliance with this section, including but not limited to, engineers to review radio frequency for compliance with standards under the Act, to confirm the existence of a significant gap in the provider service within the city and the absence of alternative available locations for the facilities and structural safety review, and attorneys fees and costs, all if necessary in the city's sole discretion.

b) Conditional Use at Certain Locations in the C-2 District. A tower is a conditional use in the C-2 general commercial district, provided that the site is located within the area bounded by Corvallis Avenue, West Broadway, Douglas Drive, 56th Avenue, and Lakeland Avenue/Bottineau Boulevard.

The applicant and property owner must submit a Special Land Use Application including the required application fees for a telecommunications tower and a conditional use permit in accordance with the fee schedule adopted by the city council, which shall include sufficient funds or the provision to draw on sufficient funds with some form of collateral satisfactory to the city, to reimburse the city its reasonable expenses to review all aspects of the application for compliance with this section, including but not limited to, engineers to review radio frequency for compliance with standards under the Act, to confirm the existence of a significant gap in the provider service within the city and the absence of alternative available locations for the facilities and structural safety review, and attorneys fees and costs, all if necessary in the city's sole discretion. The zoning administrator shall send notice of the conditional use permit public hearing to the party listed as "taxpayer" for any lots wholly or partially within 350 feet of the lot on which the proposed tower would be located. A tower may not be constructed unless a conditional use permit has been issued by, and site plan approval obtained from, the city council; and such approval may only be granted if the city council finds that the general conditional use permit criteria in section 515.05, subdivision 3 a) are met. A tower also may not be constructed unless a building permit has been issued by the building official.

c) Towers Prohibited Elsewhere; Relief Provision. Towers are prohibited in the city except as authorized by subsection 4 a) and b). Notwithstanding this prohibition, the city council may approve a tower as a conditional use in any other zoning district which reasonably addresses an identified significant gap subject to the following requirements:

1) The provider has submitted the information required by subsection 4 f) of this section.

2) The city council makes a finding that the provider has demonstrated by clear and convincing evidence that there is a significant gap in the provider's service, and:

   i) There is no co-location option that would reasonably address the demonstrated significant gap in the provider's service; or

   ii) There is no other alternative tower site authorized under subsection 4 a) or 4 b) of this section that would reasonably address the demonstrated significant gap in the provider's service.

3) In approving a tower on the site which reasonably addresses the identified significant gap, the city council shall consider the purposes of tower regulation

stated in subdivision 2 of this section and the requirements of the Act as stated in subdivision 1 of this section.

4) In considering an application where the provider has shown the existence of a significant gap, the city council shall only authorize a tower if the city makes a finding that such a location is necessary for the city to achieve compliance with the requirements of the Act.

5) The applicant and property owner submit a Special Land Use Application including the required application fee for a telecommunications tower plus the fee for a conditional use permit in accordance with the fee schedule adopted by the city council, which shall include sufficient funds or the provision to draw on sufficient funds with some form of collateral satisfactory to the city, to reimburse the city its reasonable expenses to review all aspects of the application for compliance with this section, including but not limited to, engineers to review radio frequency for compliance with standards under the Act, to confirm the existence of significant gaps and the absence of reasonably available alternative locations for the facilities and structural safety review, and attorneys fees and costs, all if necessary in the city's sole discretion. The zoning administrator shall send notice of the conditional use permit public hearing to the party listed as "taxpayer" for any lots wholly or partially within 1,000 feet of the lot on which the proposed tower would be located. The addressees for such notices shall be based on records provided to the city by the Hennepin County taxpayer services department. Such notices shall be sent via U.S. Mail no less than 10 days prior to the public hearing. Failure of a particular party to receive notice shall not invalidate the proceedings.

6) The city council makes a finding that the general Conditional Use Permit criteria in section 515.05, subdivision 3 a) are met.

7) The city council makes a finding that the design of the tower, including factors such as shape, materials, and finishes, adequately uses stealth techniques to minimize its impact on the character of the surrounding area.

8) The site must comply with the following minimum area requirements:

   i) If zoned commercial or industrial then the site shall contain no less than 2 acres.

   ii) If zoned residential then the site shall contain no less than 5 acres.

   iii) Notwithstanding a) and b) above, regardless of zoning, if the principal use on the site is a city building, county building, or a church, then the site shall contain no less than 3 acres.

   iv) For the purposes of determining site area for this particular provision, contiguous lots owned by the same entity shall be considered a single site.

9) No tower shall be located within 660 feet (1/8 mile) of another tower.

10) No tower shall be located on a lot having as its principal use a park or stormwater pond; any building containing a child care facility, elementary school, middle school or high school; or any lot having as its principal use a single family or two family dwelling. This provision shall not prohibit the subsequent establishment of such uses, even if it causes the tower to become non-conforming to this requirement.

11) No part of the tower shall be located within 165 feet (1/32 mile) of any single family or two family dwelling on another lot or within 82.5 feet (1/64 mile) of any lot line. This provision shall not prohibit the subsequent expansion of a dwelling which reduces the distance from a tower to the dwelling, even if such expansion causes the tower to become non-conforming to the setback requirement.

12) No part of the tower shall be located within 82.5 feet (1/64 mile) of any playground, herein defined as a public or private play area having equipment such as swings, slides, and similar facilities designed primarily for use by children but not including athletic facilities such as baseball or soccer fields designed for use by adults as well as children.

13) The height of the tower shall not exceed 82.5 feet, or 50% of the distance from any part of the tower to the nearest lot line of an adjacent property having a single family or two family dwelling, whichever is less.

d) The city may authorize the use of city property in accordance with the procedures and subject to the restrictions of this Code. The city shall have no obligation to use city property for such purposes.

e) Unless the applicant presents clear and convincing evidence to the city manager that co-location at the identified site is not structurally or technically feasible, a new tower may not be built, constructed or erected in the city unless the tower is capable of supporting at least 1 telecommunications facility comparable in weight, size and surface area to the one located on the tower by the applicant.

f) An application to develop a tower shall include:

1) The names, addresses and telephone numbers of all owners of other towers or antenna support structures within a half mile radius of the proposed new tower site.

2) Written documentation that the applicant has made diligent but unsuccessful efforts for permission to install or co-locate the applicant's telecommunications facilities on towers or antenna support structures within a half mile radius of the proposed new tower site.

3) Written, technical evidence from an engineer that the proposed tower or telecommunications facilities cannot be installed or co-located on another person's tower or antenna support structure located within a half mile radius of the proposed tower site and must be located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system.

4) A written statement from an engineer that the construction and placement of the tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties.

5) Written evidence from an engineer that the proposed structure meets the structural requirements of this Code.

6) Written information demonstrating the need for the tower at the proposed site in light of the existing and proposed wireless telecommunications network(s) to be operated by persons intending to place telecommunications facilities on the tower.

7) An application fee in the amount fixed by appendix IV.

g) Setbacks.

1) A tower must be located on a single parcel having a dimension equal to the height of the tower, as measured between the base of the tower located nearest the property line and the actual property line, unless a qualified engineer specifies in writing that the collapse of the tower will occur within a lesser distance under reasonably foreseeable circumstances.

2) Setback requirements for towers are measured from the base of the tower to the property line of the parcel on which it is located.

3) Towers may not be located between a principal structure and a public street, with the following exceptions:

i) In the I-1 district, towers may be placed within a side yard abutting an internal industrial street.

ii) On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.

iii) This requirement does not apply to towers that are a conditional use in all zoning districts in accordance with subsection 4 c) of this section.

h) Structural Requirements. Towers must be designed and certified by an engineer to be structurally sound and, at minimum, in conformance with the international building code and any other standards set forth in this subsection.

i) Height. A tower may not exceed 165 feet in height if approved under subsections 4 a) or 4 b) of this section. A tower may not exceed 82.5 feet in height if approved under subsection 4 c) of this section.

j) Separation or Buffer Requirements. Towers must be separated from all residentially zoned lands by a minimum of 90 feet or 150% of the height of the proposed tower, whichever is greater. The minimum tower separation distance shall be calculated and applied irrespective of city jurisdictional boundaries. Measurement of tower separation distances for the purpose of compliance with this subsection shall be measured from the base of a tower to the closest point of the proposed site. This requirement does not apply to towers that are a conditional use in all zoning districts in accordance with subsection 4 c) of this section.

k) Method of Determining Tower Height. Measurement of tower height must include the tower structure itself, the base pad, and any other telecommunications facilities attached thereto. Tower height is measured from grade.

l) Illumination. Towers may not be artificially lighted except as required by the Federal Aviation Administration (FAA). At time of construction of a tower, in cases where there are residential uses located within a distance from the tower which is 3 times the height of the tower, dual mode lighting must be requested from the FAA. Notwithstanding this provision, the city may approve the placement of an antenna on an existing or proposed lighting standard, provided that the antenna is integrated with the lighting standard.

m) Exterior Finish. Towers not requiring FAA painting or marking must have an exterior finish as approved by the city council.

n) Fencing. Fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities must be constructed in accordance with the applicable fencing requirements in the zoning district where it is located, unless more stringent fencing requirements are required by FCC regulations.

o) Landscaping. Landscaping on parcels containing towers, antenna support structures or telecommunications facilities must be in accordance with the landscaping requirements of city code and as shown in the approved site plan. Utility buildings and structures accessory to a tower must be architecturally designed to blend in with the surrounding environment and to meet such setback requirements as are compatible with the actual placement of the tower. Ground mounted equipment must be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood. Accessory buildings may not be more than 2,000 square feet in size.

p) Security. Towers must be reasonably posted and secured to protect against trespass.

q) Access. Parcels upon which towers are located must provide access during normal business hours to at least 1 paved vehicular parking space on site.

r) Stealth. To the extent reasonably practical, towers must be of stealth design.

s) Other Telecommunications Facilities. Telecommunications facilities not attached to a tower may be permitted as an accessory use to any antenna support structure at least 50 feet and no more than 100 feet in height regardless of the zoning restrictions applicable. The owner of such structure must, by written certification to the building official, establish the following facts at the time plans are submitted for a building permit:

1) That the height from grade of the telecommunications facilities and antennae support structure does not exceed the maximum height from grade of permitted structures by more than 20 feet.

2) That the antenna support structure and telecommunications facilities comply with the building code.

3) That any telecommunications facilities and their appurtenances, located above the primary roof of an antenna support structure, are set back 1 foot from the edge of the primary roof for each 1 foot in height above the primary roof of the antenna support structure. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof and do not protrude more than 6 inches from the side of the antenna support structure. Screened telecommunications facilities and their appurtenances are exempt from setback requirements.

t) Existing Towers.

1) An existing tower may be modified or demolished and rebuilt to accommodate co-location of additional telecommunications facilities as follows:

i) Application for an appropriate city permit shall be made to the city council.

ii) The total height of the modified tower and telecommunications facilities attached thereto shall not exceed the maximum height for towers allowed under this subsection.

2) A tower that is being rebuilt to accommodate the co-location of additional telecommunications facilities may be relocated on the same parcel subject to the setback requirements of this subsection. However, if it is impossible for the tower to be rebuilt in compliance with the setback requirements of this subsection, such setback requirement shall be waived to allow the tower to be rebuilt in its exact previous location.

u) Abandoned or Unused Towers or Portions of Towers. Abandoned or unused towers and associated above-ground facilities must be removed within 6 months of the cessation of operations of an antenna facility at the site unless an extension is approved by the city manager. A copy of the relevant portions of a signed lease that requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. If a tower is not removed within 6 months of the cessation of operations at a site, the tower and associated facilities may be removed by

the city and the costs of removal assessed against the property pursuant to section 635 of city code.

v) Variances. The city council may grant a variance to the setback, separation or buffer requirements, and maximum height provision of this subsection in accordance with subsection 515.05, subdivision 2.

w) Additional Criteria for Variances. The city council may grant a variance pursuant to subsection 515.05, subdivision 2 if the applicant also demonstrates all of the following with written or other satisfactory evidence:

1) The location, shape, appearance or nature of use of the proposed tower will neither substantially detract from the aesthetics of the area nor change the character of the neighborhood in which the tower is proposed to be located.

2) The variance will not create any threat to the public health, safety or welfare.

3) In the case of a requested modification to the setback requirement, that the size of parcel upon which the tower is proposed to be located makes compliance impossible, and the only alternative for the applicant is to locate the tower at another site that poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land.

4) In the case of a request for modification to the separation requirements of subsection 515.21, subdivision 4 i), that the proposed site is zoned I-1 and the proposed site is at least double the minimum standard for separation from residentially zoned lands.

5) In the case of a request for modification of the separation requirements, if the person provides written technical evidence from an engineer that the proposed tower and telecommunications facilities must be located at the proposed site in order to close a significant gap within the city in coverage of the provider and if the person agrees to create approved landscaping and other buffers to screen the tower from being visible to the residential area.

6) In the case of a request for modification of the maximum height limit, that the modification is necessary to (1) facilitate co-location of telecommunications facilities in order to avoid construction of a new tower; or (2) to meet the coverage requirements of the applicant's wireless communications system, which requirements must be documented with written, technical evidence from an engineer.

x) Maintenance. Towers must be maintained in accordance with the following provisions:

1) Tower owners must employ ordinary and reasonable care in construction and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public.

2) Tower owners must install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in compliance with the requirements of the national electric safety code and all federal communications commission,

state and local regulations, and in such a manner that they will not interfere with the use of other property.

3) Towers, telecommunications facilities and antenna support structures must be kept and maintained in good condition, order, and repair.

4) Maintenance or construction on a tower, telecommunications facilities or antenna support structure must be performed by qualified maintenance and construction personnel.

5) Towers must comply with radio frequency emissions standards of the federal communications commission.

6) In the event the use of a tower is discontinued by the tower owner, the tower owners must provide written notice to the city of its intent to discontinue use and the date when the use will be discontinued.

Subd. 5. Additional Requirements.

a) Inspections. The city may conduct inspections at any time, upon reasonable notice to the property owner and the tower owner to inspect the tower for the purpose of determining if it complies with the Uniform Building Code and other construction standards provided by the city code, federal and state law. The expense related to such inspections will be borne by the property owner. Based upon the results of an inspection, the building official may require repair or removal of a tower.

b) Excavation and Monitoring. The owner of a telecommunications facility shall provide the city with current, technical evidence of compliance with FCC radiation emission requirements, annually or more frequently at the city's reasonable request. If the owner does not promptly provide the city with satisfactory technical evidence of FCC compliance, the city may carry out tests to ensure FCC radiation compliance using a qualified expert. The owner shall reimburse the city for its reasonable costs in carrying out such compliance testing.

Subd. 6. Failure to Comply.

a) City's Right to Revoke. If the permittee fails to comply with any of the terms imposed by the conditional use permit, the city may impose penalties or discipline for noncompliance, which may include revocation of the permit, in accordance with the following provisions.

b) Procedure. Except as provided in subsection c) below, the imposition of any penalty shall be preceded by (i) written notice of the permittee of the alleged violations, (ii) the opportunity to cure the violation during a period not to exceed 30 days following receipt of the written notice, and (iii) a hearing before the city council at least 15 days after sending written notice of the hearing. The notices contained in (i) and (iiii) may be contained in the same notification. The hearing shall provide the permittee with an opportunity to show cause why the permit should not be subject to discipline.

c) Exigent Circumstances. If the city finds that exigent circumstances exist requiring immediate permit revocation, the city may revoke the permit and shall provide a post-

revocation hearing before the city council not more than 15 days after permittee's receipt of written notice of the hearing. Following such hearing, the city council may sustain or rescind the revocation, or may impose such other and further discipline as it deems appropriate.

d) Record. Any decision to impose a penalty or other discipline shall be in writing and supported by substantial evidence containing in a written record.