

Chapter 17.70

Communication Tower Regulations

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17.70.100 Purpose and General Policy: The City finds that in order to ensure public safety and provide efficient delivery of services by the City and others wishing to utilize wireless communication technologies, in order to protect public and private investments, ensure the health, safety and welfare of the population, to provide for the regulation and administration of the orderly location of antenna arrays and towers and to secure the rights of the City to a return on its investment on public property, it is necessary for the City to establish uniform rules and policies.

17.70.101 Definitions: For the purpose of this chapter, all words defined herein are in addition to all words defined in other chapters of the City of Burlington Development Program:

1. Antenna - A device, dish or array used to transmit or receive telecommunications signals.
2. ANSI - The most recently adopted standard of the American National Standards Institute, which establishes guidelines for human exposure to non-ionizing electromagnetic radiation
3. Communications tower - A tower, pole, or similar apparatus or structure which supports a telecommunications antenna operated for commercial purposes above ground in a fixed location, free standing, guyed, or on or in another structure of any kind.
4. Collocation/Site Sharing - Use of a common Wireless Communications Facility or common site by more than one wireless communication license holder or by one wireless license holder for more than one type of communications technology and or placement of a Wireless Communications Facility on a structure owned or operated by a utility or other public entity. All new wireless communications facilities shall be engineered, designed and constructed to be capable of sharing the facility with other providers, to collocate with other existing wireless communications facilities and to accommodate the future collocation of other wireless communications facilities.
5. EIA (Electronics Industries Association) Standard - Structural standards for steel antenna towers and antenna support structures.
6. Equipment Facility - Any structure used to contain ancillary equipment for a Wireless Communications Facility which includes cabinets, shelters, a build out of an existing structure, pedestals, and other similar structures.
7. FAA - Federal Aviation Administration.
8. FCC - Federal Communications Commission.
9. Height - The distance from the base of the tower to the top of the antenna, including all supporting structures.
10. Public Property/Public Real Estate - All the land and buildings owned, leased or controlled by the City of Burlington but would not include land or improvements titled in the name of the City of Burlington that are actually owned and controlled by the Burlington Municipal Waterworks Board of Trustees or the Burlington Public Library Board of Trustees.

11. Telecommunications - The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
12. Telecommunications Act of 1996 – Includes any amendment thereto and any regulations promulgated thereunder, or any other state or federal legislation enacted subsequent thereto dealing with telecommunications.
13. TIA – Telecommunications Industry Association.
14. Wireless Communication – Any personal wireless services as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that may exist.
15. Wireless Communications Facility - Any unstaffed facility used for the transmission or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables, an Equipment Facility, Tower, and a Support Structure to achieve the necessary elevation.

17.70.102 Telecommunications Act of 1996: The Telecommunications Act of 1996 prohibits the City from establishing policies that discriminate against one or a group of providers. The following objectives shall be applied consistently to all telecommunications providers that request a location on Public Property for their communications towers and antennas after the adoption of this chapter.

1. In order to minimize the overall number of towers located in the City, the applicant shall show where a tower or other collocation opportunity exists within a ½ mile radius of a proposed site, and the applicant shall provide reasons why collocation was not utilized.
2. In order to ensure that new towers will be safe and blend into their environment, providers will propose designs consistent with site characteristics.
3. In order to minimize placement of wireless equipment in populated areas, residential locations will be considered only as a last resort.
4. In order to assure fair and reasonable revenues from site leases of public property, providers must propose commercially reasonable compensation for use of public property and administration of this chapter.

17.70.103 Lease and Fee: No person or other entity shall use any public property without first obtaining a lease from the City, provided that no lease shall be granted without requiring the lessee thereof to pay a reasonable and competitively neutral fee for the use of that public property.

17.70.104 Limit on Terms: The City shall not execute any proposed lease, which shall exceed 3 years in length until fully complying with the terms of Section 364.7, Code of Iowa.

17.70.105 Priorities: Priority of the use of public property for communications antennas and towers will be given to the following entities in descending order of priority:

1. All functions of the City of Burlington.
2. Public safety agencies that are not a part of the City, including law enforcement, fire and ambulance services, and private entities with a public safety agreement with the City.
3. Other governmental agencies for uses which are not related to public safety.
4. Persons providing licensed commercial wireless communications services that are marketed to the general public for business or personal use.

17.70.106 Placement Requirements: The placement of communications antennas or towers on public property must comply with the following requirements:

1. The antenna or tower will not interfere with the use for which the public property is intended.
2. The antenna or tower will have no adverse impact on surrounding public or private property; specifically including interference with transmission or reception thereon.
3. The applicant will provide adequate liability insurance for damage antennas or towers could cause to public or private (or surrounding property) and execute a lease agreement which includes equitable compensation for the use of public property along with provisions and safeguards as deemed necessary by the City.
4. The applicant will submit a letter of credit, performance bond, or other security acceptable to the City to cover the cost of facility removal.
5. The facility will not interfere with other uses, which have a higher priority stated herein.
6. Upon the terms of the lease agreement, the City may require the applicant's facility to be removed at the applicant's expense.
7. The applicant will cooperate with the City's objective to promote collocations and thus limit the number of separate antennas sites requested. All applicants for a Building Permit to construct a Wireless Communications Facility will be required to submit a statement, including their policy for collocation, with the application agreeing to allow and reasonably market collocation opportunities to other Wireless Communications Facility users.

17.70.107 Placement on Private Property: The placement of wireless communications facilities on private property must comply with the following requirements, in addition to those stated in Section 17.70.106:

1. The facility will be allowed on private property in districts zoned Industrial or Commercial if a monopole structure is utilized.
2. The antenna or tower will have neither adverse aesthetic, economic, nor safety impact on surrounding public or private property.
3. No freestanding (not attached to an existing structure, ex. water tower, building) monopole or tower structure will be located closer than 500 feet to any property line where the use of said property is for residential purposes. The placement of communication antennas or towers on the roof of existing buildings, within commercial zones, must maintain a setback from residential zones the same as the building setback required for new buildings and cannot exceed a maximum height of 30 feet above the roof of the building.
4. The user must obtain all necessary land use approval.

17.70.108 Height Requirements: The following height conditions shall apply for free standing towers or structures:

1. Residential. Free-standing (monopole) or guyed towers shall not be placed in a residentially zoned District of the City, except as allowed by Section 17.70.111; and antennas or similar equipment placed on an existing structure will be allowed on public property in a residential district, provided all applicable codes are met. All free-standing (monopole) towers meeting the above exception shall be limited to a maximum height of 200-feet.
2. Commercial and Institutional/Governmental. Free-standing (monopole) or guyed tower with height not exceeding 200-feet is a permitted conditional use; height exceeding 200-feet requires special exception.

3. Industrial. Freestanding or guyed tower with height not exceeding 360 feet is a permitted conditional use; height exceeding 360 feet requires special exception.

17.70.109 Application Process: All applicants who wish to locate a communications antenna or tower on public property or private property must submit to the City's Community Development Department a completed application accompanied by a plan review fee set by the City. These fees may be used by the City of Burlington to engage an engineer(s) or other qualified consultant(s) to review the technical aspects of the application and Radio Frequency Intermodulation Study (if required). In cases requiring the City to hire outside consultants, any additional reasonable and necessary costs incurred by the City of Burlington for the technical review and recommendation shall be reimbursed by the applicant prior to the final approval.

The following documents, if applicable, shall be submitted for consideration prior to building permit or Special Use Permit approval:

1. One copy of typical specifications for proposed structures and antennas, including description of design characteristics and material.
2. A site plan drawn to scale showing property lines, tower location, tower height, guy wires and anchors, existing structures, photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscape plan, existing land uses on adjacent property, and the location of all underground utilities and right-of-way, provided no site plan is if the antenna is to be mounted on an approved existing structure.
3. A current map or update for an existing map on file showing locations of applicant's antennas, facilities, existing towers and proposed towers.
4. A report from a Registered Professional Engineer practicing in structural engineering showing the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with ANSI/EIA/TIA 222 standards latest revision, or any equivalent or replacement standards.
5. Identification of the owners or lessors of all antennas and equipment to be located on the site, and written authorization from the site owner for the application.
6. Evidence that a valid FCC license for the proposed activity has been issued, and valid FCC licensed equipment is used for the tower structure.
7. A written agreement to remove the facilities within 180 days after cessation of use.
8. Additional information as required, to determine that all applicable zoning regulations are met.
9. Any communications facilities located on the roof of an antenna support structure must be set back at least one foot from the edge of the roof of the structure. This set back requirement shall not apply to:
 - a. Communications facilities located above the roof of the structure if the facilities are appropriately screened from view through the use of panels, walls, fences or other screening techniques approved by the City.
 - b. Camouflage antennas that are mounted to the exterior of the antenna support structures below the roof, but do not protrude more than 24 inches from the side of such an antenna support structure.

Applicant must also show evidence that all of the following conditions, where applicable, are met:

1. A proposed antenna and equipment cannot be accommodated and function as required on any existing structure or tower under the control of the applicant.
2. For a permit in a residential district must show that the area cannot be adequately served by a facility placed in a non-residential district for valid technical reasons.

3. Prior to consideration of a permit for location on private property which must be acquired, the applicant must show that available public property sites, and available privately owned sites occupied by a compatible use, are unsuitable for operation of the tower.
4. A new tower is designed to accommodate additional antenna equal in number to applicant's present and foreseeable future requirements.
5. All applicable health, nuisance, noise, fire, building and safety code requirements are met.
6. All tower and communications facilities shall comply with camouflage design standards. Examples of camouflage facilities include, but are not limited to, architecturally screened roof, roof-mounted antennas, antennas integrated into architectural elements, telecommunications towers designed to blend into the surrounding environment or to look other than a tower, such as light poles, power poles and trees. At a minimum, all towers not requiring FAA painting or markings shall have an exterior finish which is galvanized or painted dull blue, gray or black.
7. Applicant must file with the City Clerk a written indemnification of the municipality and proof of liability insurance or financial ability to respond to claims up to \$1,000,000.00 in aggregate which may arise from operation of the facility during its life, and in a form approved by the City Attorney.
8. A tower must be a minimum distance equal to one and one-half the height of the tower from property designated historic or architecturally significant, and must be set back from all lot lines distances equal to the district setback requirements or 25% of the tower height, whichever is greater.
9. The following landscaping requirements shall apply to all Wireless Communications Facility installations:
 - a. New Construction – New Wireless Communications Facilities with support structures and attached Wireless Communications Facilities with new building construction shall be landscaped in accordance with the applicable provisions of the landscape ordinance.
 - b. Land Preservation – Existing mature tree growth and natural land form on the site shall be preserved; provided however, that vegetation that causes interference with the antennas or inhibits access to the equipment facility may be trimmed or removed.

All responses to applications for siting of telecommunications towers and facilities shall be in writing and shall be made within 60 days after all application materials are received.

17.70.110 Noise and Emission Standards: No equipment shall be operated at towers and telecommunications facilities so as to produce noise in excess of applicable noise standards under WAC 173-60 or any equivalent or replacement standards, except during emergencies or periodic routine maintenance which requires the use of a back up generator on a temporary basis.

The Federal Telecommunications Act of 1996 gives the FCC sole jurisdiction to regulate radio frequency emissions. Facilities that meet the FCC standards shall not be conditioned or denied on the basis of emissions impacts. Applicants for tower sites shall be required to provide information on the projected power density of the facility and how this meets the FCC standards.

17.70.111 Water Towers and Parks: The placement and maintenance of communications antennas or towers on certain City-owned real-estate, will be allowed when the following additional requirements are met in lieu of those conditions already stated in Sections 17.70.106 through 17.70.110.

1. Water Tower Sites – A city's water towers represent a large public investment in water pressure stabilization, distribution and peak capacity reserves. Therefore, their protection is of prime importance. As access to the City's water storage system increases, so does the potential for contamination of the public water supply.

- a. The applicant must have written approval from the General Manager of the Water Works or designee each time access to the facility is desired.
 - b. Applicant shall comply with the terms and conditions as established by the policy of the Board of Trustees.
 - c. There is sufficient room on the structure or the grounds to accommodate the applicant's facility.
 - d. The presence of the facility will not appreciably increase the water tower maintenance cost.
 - e. The presence of the facility will not be harmful to the health or safety of the workers maintaining the water tower.
 - f. Fees for application and lease shall be set by the Waterworks Board of Trustees in addition to the fees required for building permit or special use permit review.
2. Parks - The presence of certain communications antennas or towers represents a potential conflict with the purpose of certain City-owned parks and recreational facilities. Towers shall be prohibited in designated conservation areas, and communications antennas or towers will be considered only in the following parks and park facilities after the recommendation of the Parks Advisory Committee and approval of the City Council:
- a. Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use.
 - b. Commercial recreational areas and major ball fields.
 - c. Park maintenance facilities.
 - d. The fees for application and lease shall be set by the City in addition to the fees required for building permit or special use permit review.

17.70.112 Abandonment: Any Wireless Communications Facility that is not operated for a continuous period of six (6) months shall be considered abandoned, and the City of Burlington, Iowa, at its election, may require the Wireless Communications Facility owner or the owner of the ground on which the facility is located, or both, to remove the Wireless Communications Facility within 180 days after notice from the City to remove the Wireless Communications Facility. If the abandoned Wireless Communications Facility is not removed in the specified amount of time, the City may remove it and recover its costs from the Wireless Communications Facility owner or owner of the ground.

17.70.113 New Technologies: Should new technology present itself within the term of any permit or lease that is more effective, efficient, and economical, the permit holder may petition the City to allow the upgrade, provided the upgrade does not alter the conditions set forth in this chapter.

17.70.114 Amateur Radio Exclusion: This chapter shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas. Such installations shall require a special use permit application in any district formed by, and according to, this Zoning Code.

17.70.115 Airport Zoning: Any Wireless Communications Facility located or proposed to be located in airport areas governed by the Federal Aviation Administration shall also comply with the provisions of all-applicable local, state, and federal airport regulations.

17.70.116 Liability and Damages: Upon the granting of a permit, applicant shall assume full responsibility for any and all damages, claims, expenses, liabilities, judgements and costs of any kind, including reasonable attorney's fees related to or caused by the erection, location, use, or removal of a facility, whether on public or private property, and shall agree to hold the City harmless, indemnify and defend it from all such liabilities incurred or judgements entered against it as a result of the erection, location, use or removal of the facility.