

ORDINANCE NO 18-02

AN ORDINANCE AMENDING THE CITY OF NORWALK ZONING REGULATIONS TO ADD A CHAPTER RELATED TO REGULATING CELLULAR COMMUNICATION TOWERS

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF NORWALK, IOWA:

SECTION 1. PURPOSE. The purpose of this ordinance is to amend the City of Norwalk, Iowa, Zoning Regulations (Title 17) to include a new section, Chapter 17.100 Cellular Communication Towers.

SECTION 2. ZONING REGULATIONS AMENDED. The City of Norwalk Zoning Regulations (Title 17) is amended to add the following:

Chapter 17.100
CELLULAR COMMUNICATION TOWER REGULATIONS

17.100.000 PURPOSE AND GENERAL POLICY. It is necessary for the City to establish uniform rules and policies in order to ensure public safety and provide efficient delivery of services by the City and others wishing to utilize wireless communication technologies and 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.

17.100.010 DEFINITIONS. For use in this chapter the following terms are defined:

“Antenna height” means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades of the cell site shall be used in calculating the antenna height.

“Antenna support structure” means any tower or any other structure which supports a device used in the transmitting or receiving telecommunication signals.

“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.

“Communications tower” means a tower, pole, or similar structure which supports a telecommunications antenna operated for commercial purposes above ground in a fixed location, free standing, guyed or on a building.

“Existing Utility Pole” means, for the purpose of citing a Small Cell Facility, shall be a pole existing on or before July 1, 2017.

“Telecommunications” means 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.

All definitions as contained in Section 8C.2, Iowa Code, 2017 (as amended by Senate File 431), regarding the siting of Small Cell Facilities is incorporated herein.

17.100.020 TELECOMMUNICATIONS ACT OF 1996. The Telecommunications Act of 1996 prohibits the City from establishing policies that discriminate against one or a group of providers in favor of another or another group of providers or potential providers. The following objectives shall be applied consistently to all telecommunications providers that request a location on City property for their communications towers and antennas.

- A. In order to reduce the number of antenna support structures needed in the community in the future, the proposed support structure shall be required to accommodate other users, including other wireless communications companies, local law enforcement, fire and ambulance services.
- B. To ensure that new towers will be safe and blend into the environment, a full site plan shall be required for all cell sites, showing the antenna, antenna support structure, building, landscaping, fencing, buffering and access.
- C. To minimize placement of wireless equipment in highly populated areas, residential locations will be considered as a last resort. Mono-poles shall be required with respect to any cell site other than industrial zoning districts. All lattice or guyed towers are prohibited in all zoning districts except industrial zoning districts.
- D. To assure revenues from site leases of City-owned and -controlled land and structures reflect fair compensation for use of City property and administration of this chapter.

17.100.030 PRIORITIES AND PLACEMENT REQUIREMENTS. Requirements for priority and placement shall be as follows:

- A. Priority. Priority of the use of City-owned land for communications antennas and towers will be given to the following entities in descending order of priority:
 - 1. All functions of the City.
 - 2. Public safety agencies that are not a part of the City, including law enforcement, fire and ambulance services.
 - 3. Other governmental agencies for uses which are not related to public safety.
 - 4. Entities providing licensed commercial communications services, including cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and similar services that are marketed to the general public for business and/or personal use.
- B. Placement. The placement of communications antennas or towers on City-owned property must comply with the following requirements:
 - 1. The antenna or tower will not interfere with the purpose for which the City-owned property is intended.
 - 2. The antenna or tower will not adversely impact the aesthetics of the surrounding private property.
 - 3. The applicant will produce proof of adequate liability insurance for potential damage antennas or towers could reasonably cause to City property and facilities. The applicant will also submit a letter of credit, performance bond, or other security acceptable to the City to cover the cost of antenna or tower removal.
 - 4. The antenna or tower will not interfere with other uses which have a higher priority as discussed in the paragraphs above.
 - 5. The applicant must reimburse the City for any costs that the City incurs because of the presence of the applicant's antenna or tower.

17.100.040 LEASE REQUIRED. No person or other entity shall use any public property without first obtaining a lease from the City.

17.100.050 FEE REQUIRED. No lease for the use of public property shall be granted without requiring the lessee thereof to pay a reasonable and competitively neutral fee for the use of public property.

17.100.060 LIMIT ON TERM. No lease for the use of public property shall be granted for a term of more than five (5) years.

17.100.070 APPLICATION PROCESS. All applicants who wish to locate a communications antenna or tower on City-owned or private property must submit to the Planning & Building Department, a completed development application accompanied by a fee of \$200.00 and the following documents:

- A. Identification of the owners of all antennas and equipment to be located on the site.
- B. Written authorization from the site owner for the application.
- C. Proof shall be provided that the applicant is licensed by the Federal Communications Commission.
- D. A copy of typical specifications for proposed structures and antennas, including description of design characteristics and material.
- E. A current map showing locations of any existing antennas, facilities, existing towers and proposed towers currently serving any property within the City.
- F. A report from a structural engineer showing the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with ANS/E14/T14 222, latest revision, standards.
- G. Applicant must provide the names, addresses and telephone numbers of all owners of other towers or usable antenna support structures within a one-half mile radius of the proposed new tower site, including City owned property, and written documentation that the applicant (1) made diligent but unsuccessful efforts for a minimum of forty (40) days prior to the submission of the application to install or co-locate the applicant's telecommunications facilities on towers or useable antenna support structures owned by the City and other persons located within a one-half mile radius for the proposed tower site, or (2) written technical evidence from an engineer that the proposed tower or facilities cannot be installed or co-located on another persons tower or support structure.
- H. Applicant must show that a new tower is designed to accommodate additional antennas equal in number to applicant's present and future requirements.
- I. A line of sight analysis showing the potential visual and aesthetic impacts on adjacent residential districts.
- J. Applicant must provide a written indemnification of the municipality and proof of liability insurance and financial ability to respond to claims up to \$1,000,000.00 in the aggregate which may arise from operation of the facility during its life at no cost to the municipality.
- K. A written agreement to remove the tower and/or antenna within 180 days after cessation of use.

17.100.080 SPECIAL USE PERMIT NOT REQUIRED. A cell site with an antenna that is attached to an existing communications tower, smoke stack, water tower, or other structure of sufficient height, is permitted in all zoning districts. The height of the antenna shall not exceed the height of the existing structure by more than twenty (20) feet. If the antenna is to be mounted on an existing structure, a site plan shall not be required but the following conditions must be met where applicable:

- A. Water Tower Sites. The City's water tower(s) represent a large public investment in water pressure stabilization and peak capacity reserves. Therefore, its protection is of utmost importance. As access to the City's water storage system increases, so does the potential for contamination of the public water supply. For these reasons, the placement of communications towers or antennas on the water tower(s) will be allowed only when the following requirements are met:
1. The applicant must have approval from the Public Works Director each time access to the facility is desired. This will minimize the risk of contamination to the water supply.
 2. It is determined by the Public Works Director that there is sufficient room on the structure and/or the grounds to accommodate the applicant's facility.
 3. It is determined that the presence of the facility will not increase the water tower(s) maintenance cost to the City.
 4. It is determined that the presence of the facility will not be harmful to the health or safety of the workers maintaining the water tower(s).
- B. All Other Existing Structure Sites other than Water Tower Sites. 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 setback requirement shall not apply to (1) 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 or, (2) 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.
- C. For siting the small wireless facility in a public right-of-way or on an authority structure located outside of a public right-of-way to the extent that such structure is already in use as a wireless support structure by supporting non-authority communications equipment that involve external attachments, provided that such structure is not listed on the national register of historic places.
- D. For siting the small wireless facility on an existing tower, utility pole, or wireless support structure, regardless of the location, except for on property zoned and used exclusively for single-family residential use or within a previously designated area of historical significance pursuant to section 303.34 Iowa Code.

17.100.090 SPECIAL USE PERMIT IS REQUIRED. A Special Use Permit shall be required for the following:

- A. A cell site with an antenna that is either not mounted on an existing structure or is more than 20 feet higher than the structure on which it is to be mounted shall not be permitted except pursuant to a special use permit issued by the Zoning Board of Adjustments.
- B. To install a new utility pole or wireless support structure for the siting of a small wireless facility on property zoned and used exclusively for single family residential use or within a previously designated area of historical significance pursuant to section 303.34 Iowa Code.

17.100.100 STANDARDS FOR SPECIAL USE PERMIT. The following standards and procedures shall apply to the issuance of a special use permit for a cell site with an antenna:

- A. Necessity. The wireless communications company shall demonstrate, using technological evidence, that the antenna must be located where it is proposed in order to satisfy the antenna's function in the company's grid system.

- B. Co-location Effort. If the wireless communications company proposes to build a tower as opposed to mounting the antenna on an existing structure, it shall demonstrate that it has contacted the owners of structures with adequate height within a one-quarter mile radius of the proposed site, asked for permission to install the antenna on those structures, and was denied for reasons other than failure to agree on compensation. The Board of Adjustment may deny a request for a special use permit if it concludes that the applicant has not made a good faith effort to mount the antenna on an existing structure.
- C. Antenna Height. The applicant shall demonstrate, to the reasonable satisfaction of the Board of Adjustment, that the antenna is the minimum height required to function satisfactorily. No antenna that is taller than this minimum height shall be approved.
- D. Antenna Support Structure Safety. The applicant shall demonstrate, to the reasonable satisfaction of the 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.
- E. Co-location. In order to reduce the number of antenna support structures needed in the community in the future, the proposed support structure shall be required to accommodate others users, including other wireless communications companies, local law enforcement, fire and ambulance services.
- F. Parks. Communications antennas or towers will only be considered in any of the parks in the City in the following situations:
 - 1. In a public park of sufficient size, scale and character that is adjacent to an existing commercial or industrial use.
 - 2. Commercial recreational areas and major ball fields.
 - 3. Park maintenance facilities.
- G. Painting. Antenna support structures shall be painted in such a manner as to reduce the visual impact and create a harmonious appearance with its surroundings.
- H. Site Plan. A full site plan shall be required for all cell sites, not on an existing structure, showing the antenna, antenna support structure, building, fencing, landscaping, buffering and access and shall include the following information:
 - 1. Plan. A 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 the proposed structure.
 - 2. Parking Spaces. If the cell site is fully automated, adequate parking shall be required for maintenance personnel. If the cell site is not automated, the number of parking spaces shall be equal to the number of personnel on the largest work shift.
 - 3. Fencing. An opaque fence shall be installed around the antenna support structure and other equipment unless the antenna is mounted on an existing structure. The fence shall be a maximum of six (6) feet in height and serve to screen the base of the structure and to ensure safety.
 - 4. Setbacks from Base. The minimum distance between the base of the support structure and guy anchors and any property line shall be the largest of the following.

- a. Fifty (50) percent of the antenna height.
- b. One Hundred and Five (105) percent of the height of the tower if located within any “R” zoning district.
- c. The minimum setback in the underlying zoning district.
- d. Sixty (60) feet.
- e. Air Safety. Support structures 200 feet in height or taller shall meet all Federal Aviation Administration regulations.

17.100.110 LIMITATIONS ON SITING SMALL WIRELESS FACILITIES

- A. NEW POLE PLACEMENT. The city shall reasonably limit the number of new utility poles or wireless support structures for a small wireless facility, consistent with the protection of public health, safety, and welfare, and provided that such limitation does not have the effect of prohibiting or significantly impairing a wireless service provider's ability to provide wireless service within the area of a proposed new structure.
- B. AESTHETICS. A small wireless facility shall reasonably match the aesthetics of an existing utility pole or wireless support structure in the area that incorporates decorative elements.
- C. APPLICATION FOR, PROCESS, AND ISSUANCE OF PERMIT FOR SITING SMALL WIRELESS FACILITIES. An applicant requesting a permit for the siting of a small wireless facility shall be charged a fee not exceeding the limitations in Section 8C, Iowa Code, 2017 (as amended by Senate File 431). An authority shall approve or deny a permit application within ninety days following the submission of a completed application. Except as provided for in Section 8C, Iowa Code, 2017 (as amended by Senate File 431), an application shall be deemed approved if the City fails to approve or deny the application within ninety days following the submission of a completed application. The denial, by the City, of an Application must be based on those factors allowed pursuant to Section 8C, Iowa Code, 2017 (as amended by Senate File 431) or pursuant to state, local or federal laws or legislation. Height limitations for new, replacement, or modified utility poles or wireless support structure is limited pursuant to Section 8C, Iowa Code, 2017 (as amended by Senate File 431).

17.100.120 CELL SITES ON PRIVATE PROPERTY. Prior to a special use permit being issued by the Board of Adjustments for the location of an antenna or tower on private property, the applicant must show that available publicly owned sites and available privately owned sites occupied by a compatible use, are unsuitable for operation of the facility.

17.100.130 NOISE AND EMISSION STANDARDS.

- A. Noise. 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, except during emergencies or periodic routine maintenance which requires the use of a back-up generator, where the noise standards may be exceeded temporarily.
- B. Emissions. 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.

17.100.140 ABANDONMENT. In the event the use of any communications tower has been discontinued for a period of 180 consecutive days, the tower shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the City Manager who shall have the right to request documentation and/or affidavits from the communications tower owner/operator regarding the issue of tower usage. Upon such abandonment, the owner/operator of the tower shall have an additional 180 days within which to: (1) reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower, or (2) dismantle and remove the tower and return the site to its condition prior to development. At the earliest, 181 days from the date of abandonment, without reactivating or upon completion of dismantling and removal, any special exception, variance and/or special use permit for the tower shall automatically expire.

17.100.150 TERMINATION. The Council may terminate any lease if it is determined that any of the following condition(s) exist.

- A. A user's frequency broadcast unreasonably interferes with other users of higher priority, regardless of whether or not this interference was adequately predicted in the technical analysis.
- B. A user violates any of the standards in this chapter or the conditions attached to the City's lease agreement.

Before taking action, the City will provide notice to the user of the intended termination and the reasons for it, and provide an opportunity for a hearing before the Council regarding the proposed action. This procedure need not be followed in emergency situations.

17.100.160 HOME RULE. This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the 25th Amendment to the Iowa Constitution granting cities Home Rule powers. To such end, any limitation on the power of the City contained herein is to be strictly construed and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs and all ordinances and regulations of the City shall be enforced against the holders of any lease.

17.100.170 NEW TECHNOLOGIES. Should, within the term of any lease, developments within the field for which the grant was made to the holder of the lease, present the opportunity to the holder of the lease to be more effective, efficient and economical through the use of a substance or material other than those for which the lease was originally made, the holder of the lease may petition the Council which, with such requirements or limitations as it deems necessary to protect public health, safety and welfare, may allow the use of such substances under the terms and conditions of the lease

SECTION 3. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. SEVERABILITY CLAUSE. In any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be in full force and effect after its passage, approval and publication as provided by law.

Passed and approved by the City Council of the City of Norwalk, Iowa on the ____ day of _____, 2018.

Tom Phillips, Mayor

ATTEST: Jodi Tassin, City Clerk

ROLL CALL VOTE:

	Aye	Nay	Abstain	Absent
Baker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kuhl	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Livingston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Riva	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

First Reading:

Second Reading:

Third Reading:

CLERKS CERTIFICATE

I hereby certify that the foregoing Ordinance No _____ was published as required by law on the _____ day of _____, 2018.

City Clerk

CLERKS CERTIFICATE

State of Iowa

County of _____

I, _____, City Clerk of the City of Norwalk, Iowa, hereby certify that the CODE OF ORDINANCES OF THE CITY OF NORWALK, IOWA 2018, was adopted by the City Council of the City of Norwalk, Iowa, and that an official copy of said Code of Ordinances is on file at the office of the City Clerk, City of Norwalk, Iowa, and that Ordinance No _____ adopting said Code of Ordinances was passed by the City Council of the City of Norwalk, Iowa, on the _____ day of _____, 2018, signed by the Mayor on the _____ day of _____, 2018 duly recorded and published as provided by law, and that the effective date of said Code is _____, 2018

Witness my hand and official seal of the City of Norwalk, Iowa, this _____ day of _____, 2018

City Clerk, City of Norwalk, Iowa