

ORDINANCE NO. 215

**AN ORDINANCE REGULATING USE OF CITY PROPERTY, INCLUDING CITY
RIGHT-OF-WAY, AND ESTABLISHING A PROCESS FOR LOCATING EQUIPMENT
RELATED TO COMMUNICATION TECHNOLOGIES**

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215.01 PURPOSE AND POLICY.

The City Council of the City of University Heights, Iowa, finds that in order to promote and protect public health, safety, and welfare; to secure the right of the City to regulate its public property and charge a reasonable fee for use of public property, including City right-of-way; to provide efficient delivery of services by the City and others wishing to utilize communication technologies; and to provide for the regulation and administration and orderly location of communication equipment, it is necessary for the City to establish these uniform rules, regulations and policies.

215.02 DEFINITIONS.

As used in this chapter:

"Antenna" means a device, dish, or array used to transmit or receive telecommunication signals associated with a "wireless facility", as that phrase is defined by Iowa Code § 8C.2, as presently existing or hereafter amended.

"Communications" means the electronic, telephonic, or other high-tech transmission, reception, or exchange of data or information 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 or received.

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

"Height" means the distance from ground level at the base of the tower or the base of any supporting structure to the top of the tower or structure including any antenna(s) or other appurtenances.

215.03 LOCAL REGULATION.

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 for their communication towers and antennas:

1. To minimize the overall number of towers located in the City, providers may be required to participate in collocation agreements.
2. To ensure that new towers will blend into their environment, providers will propose designs consistent with site characteristics.
3. To maximize safety, new towers will be located away from population and employment centers and siting of new towers will include fall zone setbacks as specified herein.

This Ordinance intends to establish rights, responsibilities, and procedures consistent with Federal and State Law, including Iowa Code ch. 8C, and not in conflict or derogation of those laws.

215.04 FACILITIES LOCATED ON CITY PROPERTY.

1. Lease Required. No communications tower, antenna, or other equipment, appurtenance, or facility shall be located or use any public property, including City right-of-way, whether above,

below, or at grade, without first obtaining a lease or receiving a franchise from the City. Such lease may specify payment of adequate rent or other consideration as deemed appropriate and reasonable by the City Council.

2. Insurance Required. The owner of the communications tower, antenna, or other equipment, appurtenance, or facility will produce proof of liability insurance, in an amount specified by the City, for potential injury and damage that could reasonably be caused to City personnel, property and facilities, and other property and casualty loss, by the location of the towers, antennas or facilities on City property, including City right-of-way.

3. Priorities. Priority for the use of City property, including right-of-way and structures, will be given to the following entities in descending order of priority:

A. All functions of the City.

B. Public safety agencies that are not part of the City, including law enforcement, fire and ambulance services, and private entities with public safety agreements with the City.

C. Other governmental agencies for uses not related to public safety.

D. Entities providing communication services, including cellular, personal communication services, specialized mobilized radio, enhanced specialized mobilized radio, paging and similar services that are marketed to the general public for business and/or personal use.

4. Placement of Facilities. The placement and maintenance of communication towers, antennas, or other equipment, appurtenances, or facilities on City-owned property, including City right-of-way represents a potential conflict with the purpose of City-owned property, including City right-of-way. Communication towers, antennas, or other equipment, appurtenances, or facilities will be considered for location only on portions of City property, including City right-of-way, that is as remote and distant as possible from places where people regularly live, work, or gather and must be limited in size and character so as to minimize the impact to adjacent property owners. It is the expressed preference, policy, and goal of the City to locate any and all communication towers, antennas, or other equipment, appurtenances, or facilities below grade.

5. Leases Exclusive to Lessee. Any lease entered into by the City for use of City property, including City right-of-way, shall be exclusive to the lessee identified in the lease and may not be assigned without prior written approval by the City Council. No lessee may enter into a sublease or permit others to access or enjoy rights under the lease without prior written approval by the City Council.

6. Application for Lease/Use of R.O.W. Any person or entity proposing to locate communication towers, antennas, or other equipment, appurtenances, or facilities on City-owned property, including City right-of-way, or otherwise proposing to use City property, including City right-of-way, shall complete an application (in the form attached or as otherwise amended by the City Council by resolution) to the City Engineer.

215.05 LOCATING SMALL WIRELESS FACILITIES IN RESIDENTIAL ZONES

To the extent authorized by Iowa law, this Ordinance hereby proscribes locating communications facilities, including wireless facilities, small wireless facilities, and micro wireless facilities in the R-1 Single-Family Residential Zone, as established and defined by the City Zoning Ordinance.

Locating small wireless facilities in the R-1 Single-Family Residential Zone constitutes and is hereby declared a special or conditional land use. Any person or entity desiring to locate small wireless facilities, including new wireless support structures, in the R-1 Single-Family Residential Zone must obtain a special or conditional land use permit from the City Council after showing that the proposed use is reasonably necessary and will not be detrimental to neighborhood aesthetics and preserving clear lines of sight and view or otherwise detrimental to public health, safety and welfare.

215.06 SETBACK AND MAXIMUM HEIGHT REQUIREMENTS.

1. Where permitted, a communications tower or other equipment, appurtenance, or facility must be set back from all lot lines a distance equal to or greater than the tower height.

2. Where permitted, a communications tower or other equipment, appurtenance, or facility may not extend to a height that is the lesser of the following:

- a. The height restrictions of the Zoning Ordinance;

b. Forty feet (40') above the ground level at the base of the facility; or

c. Ten feet (10') above the tallest utility pole within five hundred feet (500') of the facility that existed July 1, 2017.

3. Where permitted, a communications tower or other equipment, appurtenance, or facility located on the roof of a 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 communications facilities located above the roof of the structure, if the facilities are:

A. Appropriately screened from view through the use of panels, walls, fences or other screening techniques approved by the City; or

B. Camouflaged 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.

215.07 ABANDONMENT.

In the event the use of any communication towers, antennas, or other equipment, appurtenances, or facilities have been discontinued for a period of one hundred eighty (180) consecutive days, the communication towers, antennas, or other equipment, appurtenances, or facilities shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the City Council, which shall have the right to request documentation and/or affidavits from the owner of the communication towers, antennas, or other equipment, appurtenances, or facilities regarding the issue of tower usage. At 181 days after the date of abandonment, without reactivating or upon completion of dismantling or removal, any City approval for the communication towers, antennas, or other equipment, appurtenances, or facilities shall automatically expire. Upon abandonment, the owner of the communication towers, antennas, or other equipment, appurtenances, or facilities shall have 90 days within which to dismantle and remove the communication towers, antennas, or other equipment, appurtenances, or facilities. If not done within this 90 day period, the City may dismantle and remove the communication towers, antennas, or other equipment, appurtenances, or facilities with all costs assessed to the owner.

215.08 PROCESS FOR CONSIDERING APPLICATIONS.

The following procedures shall apply to all proposed communication towers, antennas, or other equipment, appurtenances, or facilities or antenna facilities on public or private property, and to all other proposed uses of City property, including City right-of-way.

1. Submission Materials and Basis for Approval or Denial. The following information shall be submitted to the City Clerk and will be used by the City in review of the application:

A. The application and accompanying fee as set by the City Council.

B. One copy of specifications for all proposed structures, including a description of the design characteristics and material to be used.

C. A site plan drawn to scale showing existing features including property lines; existing structures and other improvements; all structures within 200 feet of the proposed location; proposed features including location and height of all communication towers, antennas, or other equipment, appurtenances, or facilities; guy wires and anchors; photographs or elevation drawings depicting design of the proposed structures; parking; fences; and landscape plan.

D. A current map or update for an existing map on file showing the locations of the owner's existing and proposed communication towers, antennas, or other equipment, appurtenances, or facilities.

E. A report from a structural engineer showing the capacity of all communication towers, antennas, or other equipment, appurtenances, or facilities by type and number, if applicable, and a certification that the communication towers, antennas, or other equipment, appurtenances, or facilities are designed to withstand winds in accordance with ANS/EIA/TIA-222 (latest revision) standards, as well as a proposed plan and schedule for periodic maintenance and inspection of the communication towers, antennas, or other equipment, appurtenances, or facilities by qualified parties.

F. Identification of the owners of all proposed communication towers, antennas, or other equipment, appurtenances, or facilities.

G. Written authorization from the site owner for the application.

H. Evidence that a valid FCC or other Federal or State license for the proposed activity has been applied for or issued if such licensing is required for the proposed communication towers, antennas, or other equipment, appurtenances, or facilities.

I. An analysis that shows the potential visual impacts of the communication towers, antennas, or other equipment, appurtenances, or facilities, as directed by the City Engineer. The analysis may be required for up to 6 different vantage points to understand and present fully the impact on University Heights and surrounding neighborhoods.

J. Additional information, as requested by City representatives, including the City Engineer, to determine that all applicable provisions of the Zoning Ordinance and other City ordinances and regulations are met.

2. Review and Action. The following review process shall be used upon receipt of a fully completed application:

A. Upon receipt of the application, the City Clerk shall forward copies of the material to the City Council, Zoning Commission, City Engineer, and City Attorney.

B. The Zoning Commission, with assistance from the City Engineer or other City representatives, shall review the application for conformance to City code provisions and issue a report for the applicant's review and response. The report may contain additional submission requirements, recommendation for approval with or without special conditions, or recommendation for denial with rationale; and shall be prepared within 30 days of the application filing. The report shall recommend that the City Council approve or not approve the application.

C. The owner shall provide a response to the Zoning Commission report in writing, and the report, with the owner's response, shall be finalized and placed on the City Council meeting agenda together with the owner's submission materials and all related documents within 30 days of receipt of the response and any additional information required in the report.

D. The City Council may approve the application with no conditions, approve the application with conditions, or disapprove the application.

215.09 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. This Ordinance intends to establish rights, responsibilities, and procedures consistent with Federal and State Law, including Iowa Code ch. 8C and not in conflict or derogation of those laws. To such ends, 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 owners of any towers or antennas.

215.10. EFFECTIVE DATE

This ordinance shall become effective upon its passage and publication as provided by law.

Adopted by the University Heights City Council this 12th day of December, 2017, and approved this 12th day of December, 2017.

 /s/
Louise From, Mayor

ATTEST:

 /s/
Christine M. Anderson, City Clerk

Steve/UH/Ordinances/Ordinance 214 re telecom and ROW 11 15 17