

ORDINANCE NO. 240

AN ORDINANCE AMENDING ORDINANCE NO. 215
(REGULATING USE OF CITY PROPERTY, INCLUDING CITY RIGHT-OF-WAY,
AND ESTABLISHING A PROCESS FOR LOCATING EQUIPMENT RELATED TO
COMMUNICATION TECHNOLOGIES)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS,
JOHNSON COUNTY, IOWA:

Part I: AMENDMENTS:

University Heights Ordinance No. 215 is amended as follows
(with additions indicated by underline; AND deletions indicated by
~~strike-through~~):

215.01 Purpose and Policy

215.02 Definitions

215.03 Local Regulation

215.04 Facilities Located on City Property

215.05 Locating Small Wireless Facilities in Residential Zones

215.06 Setback and Maximum Height Requirements

215.07 Abandonment

215.08 Process for Considering Applications

215.09 Home Rule

215.10 Effective Date

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 structures" means towers, poles, or similar structures that support 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 communications towers located in the City, providers may be required to participate in collocation agreements where permitted by law.

2. To ensure that new communications towers, excluding those affixed to utility poles or Small Wireless Facilities ("SWF") support structures, will blend into their environment, providers will propose designs consistent with site characteristics.

3. To maximize safety, new communications towers, excluding City-owned structures, antennas attached to utility poles, and SWFs, will be located away from population and employment centers and siting of new communications 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. Unless otherwise provided by Iowa law, no communications structures, towers, 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 and in accordance with State law. Notwithstanding the foregoing, a new lease or other interest will not be required for location and use of SWFs attached to any third-party owned structure, or support structure installed by applicant, lawfully located within or upon City-right-of way or other City property.

2. Insurance Required. The owner of the communications towers, 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 communications towers, antennas or facilities on City property, including City right-of-way.

3. Priorities. In determining whether to grant an application for use of City right-of-way or other City-owned property, including City 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 communications 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. Communications 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; provided, however, that the location preferences set forth in this Section will not apply to location and use of SWFs attached to third-party owned structures, City-owned support structures, or support structures installed by applicant, lawfully located within or upon City-right-of way or other City property. It is the expressed preference, policy, and goal of the City to locate any and all communications 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, unless otherwise stipulated within such lease. 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 communications 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, communications towers or other equipment, appurtenance, or facility must be set back from all lot lines a distance equal to or greater than the tower height. Notwithstanding the foregoing, this set-back restriction shall not apply to SWFs attached to third-party owned structures, City-owned support structures, or support structures installed by applicant, lawfully located within or upon City-right-of way or other City property.

2. Where permitted, communications towers or other equipment, appurtenance, or facility, excluding SWF support structures, may not extend to a height that is the lesser of the following, unless otherwise provided by Iowa law:

- 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, communications towers 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 communications towers, antennas, or other equipment, appurtenances, or facilities have been discontinued for a period of one hundred eighty (180) consecutive days, the communications 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 communications 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 communications towers, antennas, or other equipment, appurtenances, or facilities shall automatically expire. Upon abandonment, the owner of the communications towers, antennas, or other equipment, appurtenances, or facilities shall have 90 days within which to dismantle and remove the communications 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 communications 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. To the extent not prohibited by applicable State or Federal law, 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 communications 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 communications towers, antennas, or other equipment, appurtenances, or facilities.

E. A report from a structural engineer showing the capacity of all communications towers, antennas, or other equipment, appurtenances, or facilities by type and number, if applicable, and a certification that the communications 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 communications towers, antennas, or other equipment, appurtenances, or facilities by qualified parties.

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

I. An analysis that shows the potential visual impacts of the communications 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 to the extent not prohibited by applicable State or Federal law:

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 communications towers or antennas.

Part II: SAVING CLAUSE.

In the event any word, phrase, sentence, paragraph or section contained in this ordinance shall be held to be invalid, unlawful, or unconstitutional for any reason, then it is hereby declared that the remaining such portions and provisions of this ordinance would have been enacted and remain in full force and effect.

Part III: EFFECTIVE DATE.

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

Part IV: REPEALER.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

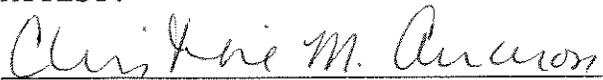
Adopted by the University Heights City Council this 9th day of July, 2019, and approved this 9th day of July, 2019.



Louise A. From, Mayor

(SEAL)

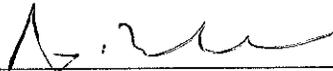
ATTEST:



Christine M. Anderson, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

On this 9th day of July, 2019, before me, a notary public in and for the state of Iowa, personally appeared Louise A. From and Christine M. Anderson, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of University Heights, Iowa; that the seal affixed to this instrument is the corporate seal of the city; and that said instrument was signed and sealed on behalf of the city, and that Louise A. From and Christine M. Anderson acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of the city, by it and by them voluntarily executed.



Notary Public in and for the
State of Iowa



STATE OF IOWA)
) SS: '
COUNTY OF JOHNSON)

I, Christine M. Anderson, being first duly sworn, certify that the above ordinance was published in the Iowa City Press-Citizen the 16th day of July, 2019.

Christine M. Anderson
Christine M. Anderson, City Clerk

Signed and sworn to before me on the 17th day of July, 2019, by Christine M. Anderson, Clerk of the City of University Heights.

[Signature]
Notary Public in and for the
State of Iowa

