

ARTICLE III. - TELECOMMUNICATION AND DATA TRANSFER

Sec. 19-65. - Purpose.

- (a) The purpose of this article is to establish regulations for the facilities and equipment involved in all modes of communication, and intended to regulate all such communication as it now exists and in the future, including for example telecommunication and wireless data transfer services, as well as their accompanying facilities, including but not limited to antennas, dishes, poles, equipment and towers. The goals of this article are:
- (1) To protect residential and riverfront areas and land uses by minimizing adverse impacts of towers, antennas, dishes, poles and telecommunications and data transfer facilities;
 - (2) To encourage the location of all such facilities in non-residential and non-riverfront areas and to ensure that they are located in areas that minimize adverse impacts;
 - (3) To enhance the ability to provide all such modes of communication services to the community quickly, effectively and efficiently;
 - (4) To promote, encourage and require, as appropriate, the shared use/collocation of such facilities as a primary option, rather than construction of additional single-use structures and to encourage the attachment of antennas, dishes and equipment to existing structures;
 - (5) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new structures to support such communication facilities;
 - (6) To ensure such facilities are configured in a way that minimizes adverse visual impacts by careful design, appropriate siting, landscape screening, and innovative camouflaging techniques;
 - (7) To avoid potential damage to property caused by such facilities by insuring such structures, facilities and equipment are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or are determined to be structurally unsound;
 - (8) To ensure that all such facilities are compatible with surrounding land uses; and
 - (9) To ensure that said communications facilities do not compromise public safety communications.
- (b) In furtherance of these goals, the city shall give due consideration to its comprehensive plan, zoning map, existing land uses and environmentally sensitive areas in approving sites for the location of these facilities.

Sec. 19-66. - Definitions.

Alternative tower structure means manmade trees, clock towers, bell steeples, flag poles, light poles and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals, the presence of antennas, dishes, poles, equipment and/or towers. This term also includes any antenna or antenna array attached to the alternative tower structure.

Antenna shall mean any exterior transmitting or receiving devices mounted on a tower, utility pole, light pole, building or structure and used in communications that radiate or capture

electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless signals and/or other communication signals.

Backhaul network shall mean the lines that connect a provider's antenna/tower/cell sites to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

FAA shall mean Federal Aviation Administration.

FCC shall mean Federal Communications Commission.

Commercial Zoning Districts for the purpose of this article shall mean the following zoning districts: General Retail (B-2); Wholesale (B-3); P- Park and Recreation District; Planned developments where uses are consistent with B-2, B-3, and P zoning districts (PD); Planned development districts where uses are consistent with B-2, B-3, and P zoning districts (PDD).

Decorative light poles shall mean those light poles which are decorative in nature including and not limited to those which are designed to replicate poles used in the past. Said poles are utilized the downtown, in historic districts and throughout the city in other areas.

Guy tower shall mean a tower that is supported in whole or in part by guy wires and ground anchors.

I-88 Technology Corridor for the purpose of this article shall mean the area contained within one (1) mile of Interstate 88 as measured from the centerline of the Tollway.

Industrial Zoning Districts for the purpose of this article shall mean the following zoning districts: Manufacturing (M); Office, research, light industrial (ORI); Research & development (R & D); Planned developments where uses are consistent with M, ORI and R & D zoning districts (PD); Planned development districts where uses are consistent with M, ORI, and R & D zoning districts (PDD).

Lattice or self-supporting tower shall mean a tower that has open-framed supports on three (3) or four (4) sides and is constructed without guy wires and ground anchors.

Monopole shall mean a tower consisting of a single-pole constructed without guy wires or ground anchors.

Communications facilities shall mean the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennas, dishes, towers, communications support facilities including but not limited to base stations, radios and signal processing, telephone switches, GPS, Internet and electrical equipment, alternative tower structures, electronics and other appurtenances used to transmit, receive, distribute, provide or offer communications services.

Communications service shall mean the providing or offering for rent, sale or lease or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave or other wavelength, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

Communications support facilities shall mean support buildings, structures, platforms and equipment cabinets containing electrical and mechanical equipment and devices used for the reception of or transmission of voice, data image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, Radio Frequency (RF) spectrum, satellite or similar facilities.

Tower shall mean any structure designed and constructed primarily for the purpose of supporting one (1) or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, wireless data transmission towers, and other similar structures. This term also includes any antenna or antenna array attached to the tower structure. For purposes of this article, except as to towers located or proposed to be located in a historic preservation district, the term tower excludes any tower under ~~forty-five (45)~~fifty (50) feet in total height, under said height the structure shall be considered a utility pole or light pole.

Utility / light poles (sometimes "poles") shall mean, a structure designed and constructed primarily for the purpose of supporting utilities and/or lighting such as electricity, wired phone or data service, street lights, and traffic signals, on private property, city property or public right of way, owned by the city or a third party. Said designation shall also include any structures, fifty (50) feet or under, designed and constructed primarily for the purpose of supporting one (1) or more antennas. For purposes of this article, the term utility pole or light pole excludes any utility pole or light pole over fifty (50) feet in total height, over said height the structure shall be considered a tower.

Sec. 19-67. - Applicability.

- (a) *New towers, antennas or poles with antenna(s)*. All new towers, antennas or poles with antenna(s) (including specifically land covered by 65 ILCS 5/7-4-2) shall be subject to these regulations, except as provided in subsections (b)—(d) inclusive, below.
- (b) *Amateur radio station operators/receive only antennas*. This article shall not govern any tower, or the installation of any antenna, that is sixty-five (65) feet and under in total height and is owned and operated by a federally-licensed amateur radio station or citizens band radio operator; or an antenna or tower that is used exclusively for receive only transmissions and that is fifty (50) feet and under in total height. Such antennas and towers shall instead be regulated by the city zoning ordinance.
- (c) *Preexisting towers, antennas or poles with antenna(s)*. All preexisting towers, antennas or poles with antenna(s) in place prior to July 14, 2016, shall not be required to meet the requirements of this article, other than the requirements of sections 19-68(h) and (l), 19-73, 19-74, and 19-75.
- (d) *AM array*. For purposes of implementing this article, an AM array, consisting of one (1) or more tower units and supporting ground system which functions as one (1) AM broadcasting antenna, shall be considered one (1) tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.
- (e) *Fees*. Any fees referenced in this article with respect to communication facilities in the public rights of way, shall not be applicable to those entities paying the city's Simplified Municipal Telecommunications Tax, pursuant to Section 91-2 of the city code.

Sec. 19-68. - General requirements.

- (a) *Principal or accessory use*. Communications facilities, towers, antennas and poles, may be considered either principal or accessory uses. A different existing use of an existing structure on the same zoning lot shall not preclude the installation of an antenna, pole or tower on such lot.
- (b) *Lot size*. For purposes of determining whether the installation of communications facilities, towers, antennas and poles complies with this article, including but not limited to setback

requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire zoning lot shall control, where applicable, even though the communications facilities may be located on leased parcels within such lot.

- (c) *Measurement.* For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the city irrespective of municipal and county jurisdictional boundaries. For the purposes of measurement, height or total height shall mean and be calculated as, the distance measured from the lowest point on the ground of the structure to the highest point on the structure, including the base pad and any antenna.
- (d) *Not essential services.* Telecommunications facilities, towers and antennas shall be regulated and permitted pursuant to this article and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- (e) *Inventory and tracking.* The zoning administrator may compile a map and list of towers, antennas, and poles, and maintain and update the same from information furnished by all communications providers. The zoning administrator may issue a registration number to be affixed to and displayed on each such facility. A reasonable fee as determined by the zoning administrator may be assessed for an initial registration and annual inspection fees.
- (f) *Aesthetics.* All such communication facilities shall meet the following requirements:
 - (1) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted so as to reduce visual obtrusiveness. Poles shall be of a design consistent with any existing adjacent poles
 - (2) Design of the accessory buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings. Where there is sufficient space, underground vaults may be utilized for equipment associated with communications facilities.
 - (3) Antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible, unless a different color is needed for public safety or service reliability reasons.
- (g) *Lighting.* Towers, antenna and poles shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- (h) *State or federal requirements.* All communications facilities must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate communications facilities. If such standards and regulations are changed, then the owners of the communications facilities governed by this article shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring telecommunications facilities into compliance with such revised standards and regulations shall constitute grounds for their removal at the owner's expense as provided in section 19-76.
- (i) *Building codes: safety standards.* To ensure the structural integrity of communications facilities the owner shall ensure that they are maintained in compliance with standards contained in applicable state or local building codes and the applicable standards published in the National Electrical Code, as amended from time to time. If, upon inspection, the city concludes that any communications facility fails to comply with such codes and standards

and constitutes a danger to persons or property, then upon notice being provided to the owner, the owner shall have thirty (30) days to bring such structure into compliance with such code and/or standard. Failure to do so within said thirty (30) days shall constitute grounds for the removal of the communications facility at the owner's expense, as provided in section 19-76.

- (j) *Public notice.* For purposes of this article, any special use request, variance request, or appeal of an administratively approved use or special use shall require public notice and individual notice by the city at applicant's expense to all abutting property owners and within two hundred fifty (250) feet of the boundaries of the zoning lot in question. Streets, alleys and watercourses shall not be considered in the determination of "abutting" nor in calculating the two hundred fifty (250) feet.
- (k) *Signs.* No signs shall be allowed on communication facilities, except warning or notification signs required by federal law or regulations, identification and location markings, or as otherwise required by this article. Antenna shall not have signs installed thereon.
- (l) *Buildings and support equipment.* Buildings and support equipment associated with communications facilities shall comply with the requirements of section 19-72.
- (m) *Multiple communications facilities plan.* The city encourages the owners of all communications facilities to submit a single application for approval of multiple sites. Applications for approval of multiple sites shall be given priority in the review process.
- (n) *Availability of suitable existing towers, other structures, or alternative technology.* For a new tower, or pole with antenna(s) the applicant shall demonstrate to the reasonable satisfaction of the zoning administrator, FoxWalk Overlay District Design Review Committee, the planning commission, or city council, as the case may be, that no existing tower, pole, structure or alternative technology which does not require the use of towers or additional structures can accommodate the applicant's proposed pole or antenna. Evidence submitted to demonstrate that no existing tower, pole, structure or alternative technology which does not require the use of towers or structures can accommodate the applicant's proposed pole or antenna may consist of any of the following:
 - (1). No existing towers, poles or structures are located within the geographic area which meet applicant's engineering requirements.
 - (2) Existing towers, poles or structures are not of sufficient height to meet applicant's engineering requirements and cannot be enlarged sufficiently to meet their needs.
 - (3) Existing towers, poles or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (4) The applicant's proposed pole or antenna would cause electromagnetic interference with antenna on existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (5) The fees, costs, or contractual provisions required by the owner in order to share an existing tower, pole or structure or to adapt an existing tower, pole or structure for sharing are unreasonable.
 - (6) The applicant demonstrates that there are other limiting factors that render existing towers, pole and structures unsuitable.
 - (7) The applicant demonstrates that an alternative technology that does not require the use of towers, pole or structures, such as a microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs

of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

- (o) *Setbacks.* The following setback requirements shall apply to all communications facilities from any adjoining lot line except as otherwise provided for in a license or lease approved by the city:

(1) Non-Guyed Tower Structures

- a. Within, abutting or across a public right of way from a residential use or district - must be set back a distance equal to the greater of the required **buildingfacility** setback in the applicable zoning district or to at least two hundred (200) percent of the height of the facility.
- b. Not within, abutting or across a public right of way from a residential use or district - must be set back a distance equal to the greater of the required **buildingfacility** setback in the applicable zoning district or to at least seventy-five (75) percent of the height of the facility, or at least fifty (50) percent of the height of the facility if a monopole.

(2) Guyed Tower Structures

- a. Within, abutting or across a public right of way from a residential use or district – the entire facility including guy anchors must be set back a distance equal to the greater of the required **buildingfacility** setback in the applicable zoning district or the height of the tower.
- b. Not within, abutting or across a public right of way from a residential use or district - must be set back a distance equal to the greater of the required **buildingfacility** setback in the applicable zoning district, or one hundred (100) percent of the breakpoint of the tower.

(3) Poles with antenna(s)

In addition to the requirements in Chapter 42, Article X “Construction of Facilities in the Public Rights of Way”, the following additional setbacks shall apply:

- a. Within, abutting or across a public right of way from a residential use or district - must be set back from any structure a distance of at least one hundred (100) percent of the height of the facility.
- b. Not within, abutting or across a public right of way from a residential use or district - must be set back from any structure a distance of at least seventy five (75) percent of the height of the facility.

- (p) *Separation.* The following separation requirements shall apply to all communications facilities except as otherwise provided for in a license or lease approved by the city:

(1) Tower Separation from Certain Uses and Zones.

- a. Tower separation from off-site uses/designated areas shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
- b. Separation requirements for towers shall comply with the minimum standards established in Table 1 below:

Table 1. Minimum Tower Separation from Certain Uses and Zones

Off-site Use/Designated Area - Separation Distance

Single or two-unit dwellings - 500 feet

Vacant platted or un-platted residentially zoned land - 500 feet

Existing multi-family residential units - 300 feet

Fox River - 300 feet

Non-residentially zoned lands with nonresidential uses - None; only setbacks apply

(2) Tower Separation from towers.

- a. Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 2. Minimum Tower Separation between Towers (in feet)

Proposed Tower Type Existing Towers – Height

	A) More than 50 less than or equal to 100 Feet	B) More than 100 less than or equal to 150 Feet	C) More than 150 less than or equal to 200 Feet	D) More than 200 Feet
A) More than 50 less than or equal to 100 Feet	750	1,000	1,500	1,500 2,000
B) More than 100 less than or equal to 150 Feet	1,000	1,500	2,000	2,500
C) More than 150 less than or equal to 200 Feet	1,500	2,000	2,500	2,500
D) More than 200 Feet	2,000	2,500	2,500	3,000

(3) Poles with antenna(s) Minimum Separation distances between Poles.

- a. Separation distances between poles with antenna(s) shall be applicable for and measured between the proposed pole with antenna(s) and preexisting pole with or

without antenna(s). The separation distances shall be measured by drawing or following a straight line between the base of the existing pole and the proposed base, pursuant to a site plan, of the proposed pole.

- b. In addition, the following separation distances shall apply:
 - i. Within, abutting or across a public right of way from a residential use or district - must be separated by a minimum of fifty (50) feet.
 - ii. Not within, abutting or across a public right of way from a residential use or district - must be separated by a minimum of fifty (50) feet.
- (q) *Security fencing.* Towers and associated Communication Support Facilities shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an acceptable anti-climbing device or design; provided however, that the zoning administrator, FoxWalk Overlay District Design Review Committee, planning commission, or city council, as the case may be, may waive such requirements, as they deem appropriate.
- (r) *Landscaping.* The following requirements shall govern the landscaping surrounding communications facilities:
 - (1) Communications facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the facilities from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the facility.
 - (2) In locations where the visual impact of the facility would be minimal, the landscaping requirement may be reduced or waived.
 - (3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be a sufficient buffer. No tower or other communications facility shall be located on a wetland as designated by local, state or federal authorities.
 - (4) Communications support facilities shall be screened as follows:
 - a. In any yard the communications support facilities shall be screened from view of all residential properties which abut or are directly across the street from the communications support facilities by a solid fence six (6) feet in height or an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least thirty-six (36) inches.
 - b. In a side yard the communications support facilities shall be screened by an evergreen hedge with an ultimate height of at least forty-two (42) to forty-eight (48) inches and a planted height of at least thirty-six (36) inches.
 - c. In a rear yard the communications support facilities shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least thirty-six (36) inches.
 - d. In a public right of way, if deemed necessary by the zoning administrator, communications support facilities shall be screened by an evergreen hedge with an ultimate height of at least forty-two (42) to forty-eight (48) inches and a planted height of at least thirty-six (36) inches.
- (s) *Application Information required.* In addition to any information required for applications pursuant to the zoning ordinance or building code, applicants for a communication facility use

may be required to submit all, or a portion of, the following information depending upon the requested use and site:

- (1) The name, address and telephone number and email address of the owner and lessee of the parcel of land as well as for the owner and operator of the communications facility which is the subject of the application. If the applicant is not the owner of the parcel of land, the written consent of the owner shall be evidenced in the application.
- (2) A scaled site plan clearly indicating the location, type and height of the proposed facility and other information deemed by the zoning administrator to be necessary to assess compliance with this article, including but not limited to:
 - a. On-site land uses and zoning, adjacent land uses and zoning (including when located in other municipalities), comprehensive plan classification of the site and all properties within the applicable separation distances set forth in subsection 19-68(o) and 19-68(p)
 - b. Adjacent roadways, proposed means of access, setbacks from property lines, elevation plan drawn to scale in blueprint form and other supporting blueprints of the proposed facility and any other structures, topography, and parking.
 - c. Legal description of the parent tract and leased parcel (if applicable).
 - d. The setback distance between the proposed tower and/or pole and the nearest residential unit, platted residentially zoned (or planned) properties.
 - e. A landscape plan showing specific landscape materials.
 - f. Method of fencing, finished color and, if applicable, the method of camouflage or concealment and illumination.
 - g. *Inventory of existing sites.* Every applicant shall provide to the zoning administrator an inventory of ~~its~~their existing ~~tele~~communications facilities, towers and antennas, or sites which have been approved for ~~tele~~communications facilities, towers and antennas, or for which applications or petitions for approval have already been filed, that are either within the jurisdiction of the city or within one (1) mile of the border thereof, including specific information about the location, height and design of each ~~tele~~communications facility, tower and antenna. The zoning administrator may share such information with other applicants applying for administrative approvals or special use permits under this article or other organizations seeking to locate ~~tele~~communications facilities within the jurisdiction of the city, provided, however that the zoning administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (3) *Franchises.* Owners and/or operators of ~~tele~~communications facilities shall certify that permits from all franchises required by law for the construction and/or operation of ~~tele~~communications services with the city have been obtained and shall file a copy of all ~~required franchise Agreements~~said permits with the zoning administrator.
- (4) *Affidavit for co-location.* For a new tower or pole with antenna(s) a notarized statement by the applicant as to whether the communication facility will accommodate collocation of additional antennas for future users. If so, the applicant shall submit an affidavit stating that space on the proposed new tower or pole will be made available to future users for co-location.

- (5) An affidavit from a third party professional addressing the following:
- a. A description of compliance with subsections 19-68(f)—(n), and all applicable federal, state or local laws.
 - b. Current radio frequency coverage prediction in the area served both prior to and after construction of the proposed communications facility and technical performance goals for the desired signal strength.
 - c. Drive test results which confirm or refute the areas shown on coverage maps used in planning the system used by the communications provider.
 - d. The suitability or unsuitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new communication facility, including information regarding the number of calls dropped and failed hand-offs between existing call sights within two (2) miles of the city.
 - ~~e. A description of the feasible location(s) of future towers, poles or antennas within the city based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.~~
 - ef. A written statement from an engineer(s) that the construction and placement of the ~~tele~~communications facility, tower or antenna will not interfere with public safety communications and the usual and customary transmission or reception of radio, television or other communications services enjoyed by adjacent residential and nonresidential properties.
- (6) An affidavit by the owner of the parent tract (if the location is leased) agreeing to the terms relating to removal of the facility, as described in section 19-73.
- (7) Identification of the entities providing the backhaul network for the ~~tele~~communications facility described in the application and other cellular sites owned or operated by the applicant in the city, updated on at least an annual basis, and the method of providing backhaul, wired or wireless.
- (8) A notarized statement by a licensed structural engineer attesting to the structural integrity of the ~~tele~~communications facility ~~and~~ for its proposed use.
- (9) Color photo simulations showing the proposed site of the ~~tele~~communications facility, tower or antenna with a photo-realistic representation of the proposed facility as it would appear viewed from the road, closest residential property, or other adjacent land use.
- (10) Upon the request of the zoning administrator, the director of public property or their designees, the ~~tele~~communications provider shall meet with the requesting official(s) and provide them with information concerning the proposed system design, which information shall not be reduced to writing and shall be treated as a confidential trade secret.

Sec. 19-69. - Permitted Uses.

- (a) *Generally.* The uses listed in this section are deemed to be permitted uses and shall not require Administrative Review or a special use permit, but require a building permit(s) and any other applicable permits.
- (b) *Permitted uses.*
- (1) Communications facilities located on property owned, leased or otherwise controlled by the city are specifically permitted in any public right of way or zoning district, except in a historic or overlay district, provided a license or lease authorizing such communications facilities has been approved by the city.
 - (2) Antennas or other communication facilities mounted on new, existing or modified poles are permitted in any zoning district, up to ten (10) feet above the height of the pole, provided a license or lease authorizing such ~~antennas~~ has been approved by the city. Said ~~antennas~~ installation shall not be allowed on decorative light poles.
 - (3) New, replacement or modifications to existing, poles are permitted in any zoning district, provided a license or lease authorizing such installations or modifications has been approved by the city.
 - (4) In order to encourage the use of monopoles, the reconstruction of an existing tower to monopole construction in the same location, of equal height, and deemed in conformance with the provisions of this article shall be permitted.
 - (5) New Antennas (not attached to a tower) on an existing building may be permitted as an accessory use, provided:
 - a. The property is in a Commercial Zoning District, Industrial Zoning District or on a three story or higher building in a R-5 Multiple-Family Dwelling District; R-5A Midrise Multiple-Family Dwelling District; Planned developments where uses are consistent with R-5 or R-5A zoning districts (PD); Planned development districts where uses are consistent with R-5 or R-5A zoning districts (PDD);
 - b. The antenna does not extend more than fifteen (15) feet above the highest point of the building;
 - c. The antenna complies with all applicable FCC and FAA regulations;
 - d. The antenna complies with all applicable building codes; and
 - e. The antenna is set back from any existing or planned off-site residential property zoned R-1 through and including R-4A, a distance of no less than one hundred (100) feet.
 - (6) New Antennas on existing towers. To encourage the maximum use of existing towers, an antenna which is attached to an existing tower may be permitted provided the type, location and height of the tower is not changed.

Sec. 19-70. – Administrative Review.

- (a) *Generally.* The following provisions shall govern approval of communications facilities through Administrative Review.
- (1) Each applicant for Administrative Review approval shall apply to the zoning administrator providing the information required and a non-refundable fee as set by resolution of the city council from time to time, to reimburse the city for the costs of reviewing the application. An application shall not be reviewed nor otherwise acted upon until all required information is completed and delivered to the zoning administrator.

- (2) The zoning administrator shall review the application for Administrative Review approval to determine if the proposal complies with this article.
 - (4) The zoning administrator shall respond to each such application in writing within sixty (60) days after receiving it by either accepting or denying the application. Failure to respond to the applicant within such sixty (60) days, shall result in the application being deemed to be accepted.
 - (5) In connection with any such Administrative Review approval, the city council may reduce any setback or separation requirements in Section 19-68 or separation distances in subsection 19-68, Table 2 only, by up to fifty (50) percent.
 - (7) If an Administrative Review approval is denied, the applicant may file an application for a special use permit pursuant to section 19-71.
- (b) *List of Administrative Review uses.* The following uses may be approved by the Administrative Review process if it is determined that the proposed communications facility is not in any historic or overlay district, complies with the applicable standards of this article and with the following:
- (1) Alternative tower structures, provided the structure is equal to or less than one hundred and fifty (150) feet.
 - (2) New Towers, poles or antennas in a Commercial Zoning District or Industrial Zoning District, provided the structure is equal to or less than one hundred (100) in total height.
 - (3) Modification or Reconstruction of Existing Tower for Co-location. To minimize adverse visual impacts associated with the proliferation and clustering of towers or poles, modification or reconstruction to accommodate the, collocation of antennas by more than one (1) carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:
 - a. *Type.* A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless it is reconstructed as a monopole.
 - b. *Height.*
 - i. An existing tower may be modified or rebuilt to a taller height, not to exceed twenty (20) feet over the tower's existing height, to accommodate the collocation of an additional antenna.
 - ii. The height change referred to in subsection i. above may only occur one (1) time per tower.
 - iii. The additional height referred to in subsection i. above shall not require an additional distance separation as set forth in section 19-68(s). The tower's pre-modification height shall be used to calculate such distance separations.
 - c. *Onsite location.*
 - i. A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within thirty (30) feet of its existing location.

- ii. A bond in the amount of twenty-five thousand dollars (\$25,000.00) shall be required at time of filing of application for relocation under this section to ensure removal of an existing tower. After the tower is rebuilt to accommodate collocation, only one (1) tower may remain on the site, and the existing tower shall be removed in any event no later than six (6) months after the newly relocated tower is functioning.
 - iii. A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to subsection 19-68(s). The relocation of a tower hereunder shall in no way be deemed to cause a violation of subsection 19-68(s).
 - iv. The onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands as established in subsection 19-68(s) shall only be permitted when approved by the city council.
- (4) New towers in an Industrial Zoning District, the structure is two hundred (200) feet or under in total height, provided the tower is accessory to a building with a use permitted or approved as a special use under the applicable zoning district, and provided the tower meets the following height and usage criteria:
- a. For a single user, up to and including one hundred (100) feet in height;
 - b. For two (2) users, up to one hundred fifty (150) feet in height; and
 - c. For three (3) or more users, up to and including two hundred fifty (200) feet in height.

Sec. 19-71. - Special use permits.

- (a) *Generally.* The following provisions shall govern the issuance of special use permits for communications facilities:
- (1) A Special Use Permit shall be required in all zoning districts for communications facilities that are:
 - a. not a permitted use under section 19-69, or
 - b. not administratively pursuant to section 19-70
 - c. New towers and/or new communication support facilities within the I-88 Technology Corridor
 - (2) Applications for special use permits under this section shall be subject to the procedures and requirements of section 10-6 of the zoning ordinance, except as modified in this section.
 - (3) In connection with any such Special Use Permit, the City Council may reduce any fencing, landscaping, setback or separation or other requirements in section 19-68 if the goals of this article would be better served thereby.
 - (4) In granting a special use permit, the FoxWalk Overlay District Design Review Committee, the planning commission, or city council, as the case may be, may impose conditions to the extent they conclude such conditions are necessary to minimize any adverse effect of the proposed communications facilities including but not limited to extension facade materials and design, on adjoining properties.

- (5) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer or licensed professional architect as determined by the zoning administrator.
 - (6) An applicant for a special use permit shall apply to the zoning administrator, provide the information required and a non-refundable fee as set by resolution of the city council from time to time to reimburse the city for the costs of reviewing the application.
- (b) *Factors considered in granting special use permits.* In addition to any standards for consideration of special use permit applications pursuant to section 14-6 of the zoning ordinance, the FoxWalk Overlay District Design Review Committee, the planning commission, or city council, as the case may be, shall consider the following factors in determining whether to issue a special use permit, although they may waive or reduce the burden on the applicant of one (1) or more of these criteria if they conclude that the goals of this article are better served thereby:
- a. Height of the proposed communications facility; is above what is allowed as an Administrative Review (Sec. 19-70);
 - b. ~~Proximity~~Separation of the communications facility ~~to~~from residential structures and ~~or~~ residential district boundaries; (Sec. 19-68.p.1);
 - c. ~~Nature of uses on adjacent and nearby properties;~~Separation of the communications facility from other communication facilities (Sec. 19-68.p.2);
 - ~~d. Surrounding topography;~~
 - ~~e. Surrounding tree coverage and foliage;~~
 - fd. Facility Setback requirement from any adjoining lot line (Sec. 19-68.o);
 - e. Design of the communications facility with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; (Sec. 19-68);
 - ~~g. Proposed ingress and egress; and~~
 - hf. Availability of suitable existing communications facilities, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in subsection (Sec. 19-68(q.n)).

Sec. 19-72. - Communications support facilities.

- (a) *Antennas mounted on structures or rooftops.* The communications support facilities used in association with such antennas shall comply with the following:
 - (1) The communications support facilities shall not contain more than four hundred fifty (450) square feet of gross floor area or be more than fifteen (15) feet in height. In addition, for buildings and structures which are less than sixty-five (65) feet in height, the related communications support facilities if over one hundred fifty (150) square feet of gross floor area or ten (10) feet in height, shall be located on the ground and shall not be located on the roof of the structure, unless alternative architecturally acceptable screening is utilized.

- (2) If the communications support facilities are located on the roof of a building, the area of the communications support facilities and other equipment and structures shall not occupy more than twenty-five (25) percent of the square footage of the roof area.
 - (3) Communications support facilities shall comply with all applicable building codes.
- (b) *Antennas mounted on utility poles or light poles.* The communications support facilities used in association with such antennas shall be located in accordance with the following:
- (1) In Commercial Zoning Districts telecommunications support facilities may be located:
 - a. In a side yard, provided the communication support facilities meet the applicable zoning district setback requirements and are no greater than four (4) feet in height or twenty-four (24) square feet of gross floor area and the telecommunications support facilities are located a minimum of six (6) feet from all lot lines..
 - b. In a rear yard, provided the communications support facilities meet the applicable zoning district setback requirements and are no greater than six (6) feet in height or two hundred forty (240) square feet in gross floor area.
 - c. On the support structure, provided the communications support facilities are lower than ten (10) feet above grade level measured from the bottom of the support structure, shall be no greater than twenty eight (28) square feet and must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible, unless a different color is needed for public safety or service reliability reasons.
 - (2) In Industrial Zoning Districts communications support facilities may be located:
 - a. In a side or rear yard provided communications support facilities meet the applicable zoning district setback requirements and no greater than six (6) feet in height or sixty-four (64) square feet in gross floor area.
 - b. On the support structure, provided the communications support facilities be lower than ten (10) feet above grade level measured from the bottom of the support structure, shall be no greater than twenty eight (28) square feet and must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible, unless
 - (3) In all other zoning districts, the communications support facilities may be located:
 - a. In a side yard provided the communications support facilities meet the applicable zoning district setback requirements and are no greater than four (4) feet in height or twenty-four (24) square feet of gross floor area and the communications support facilities are located a minimum of six (6) feet from all lot lines.
 - b. In a rear yard, provided the communications support facilities meet the applicable zoning district setback requirements and are no greater than six (6) feet in height or two hundred forty (240) square feet in gross floor area.
 - c. On the support structure, provided the communications support facilities are lower than ten (10) feet above grade level measured from the bottom of the support structure, shall be no greater than twenty eight (28) square feet and must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive

as possible, unless a different color is needed for public safety or service reliability reasons.

- (4) In public right of way, provided a license or lease authorizing such communications support facilities has been approved by the city.
 - a. At grade, provided the communications support facilities meet the requirements in Chapter 42, Article X "Construction of Facilities in the Public Right of Way".
 - b. On the support structure, provided the communications support facilities are lower than ten (10) feet above grade level measured from the bottom of the support structure, shall be no greater than twenty eight (28) square feet and must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible, unless a different color is needed for public safety or service reliability reasons.
- (c) *Antennas located on towers.* The communications support facilities used in association with such antennas shall comply with the following:
 - (1) The communications support facilities may be located in a side or rear yard provided communications support facilities meet the applicable zoning district setback requirements and shall be no greater than ten (10) feet in height or two hundred forty (240) square feet in gross floor area.
- (d) *Modification requirements.* The requirements of subsections (a)—(c) above may be modified by the zoning administrator, FoxWalk Overlay District Design Review Committee, the planning commission, or city council, as the case may be, to facilitate collocation or alternative methods of screening or housing such facilities.

Sec. 19-73. - Removal of abandoned antennas and towers.

- (a) Any communications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, whether or not the owner or operator intends to make use of such facility.
- (b) If upon inspection by the zoning administrator it is determined that a communications facility is abandoned, or, upon receipt by the city of the owner's notice to the FCC of intent to cease operations, the zoning administrator shall send a written notice of such abandonment to the owner of the communications facility and the owner of the property if such owner is different from the owner of such facility. Such notice shall be mailed by certified mail, return receipt requested.
- (c) The owner of the communications facility and the owner of the property if such owner is different from the owner of such facility, shall have sixty (60) days after receipt of the notice to remove all of such facility, including any and all footings and foundation.
- (d) If such communications facility is not removed within sixty (60) days after receipt of notice from the city notifying the owners of such abandonment, the city may remove such facility and file a lien against the property for the costs of removal.
- (e) The city may pursue any and all available legal remedies to insure that an abandoned communications facility is removed.

- (f) Any delay by the city in taking action to enforce the removal of an abandoned communications facility, against the owner of the communications facility, and the owner of the property if such owner is different from the owner of such facility, shall not waive the city's right to take any action at a later time.
- (g) The city may seek to have the communications facility removed regardless of the owners' or operator's intent to operate such facility, and regardless of any permits, federal, state or otherwise, which may have been issued or granted.
- (h) If the owner of an abandoned communications facility wishes to use such an abandoned facility, the owner shall first apply for and receive all applicable permits and meet all of the conditions of this article as if such communications facility were a new facility.
- (i) In those instances where the city has located communications equipment in a facility owned by a communications provider, and such facility is abandoned by the communications provider without due advance notice to the city, the city may take all available legal remedies in order to take control of the facility in order to maintain and operate its communications equipment.

Sec. 19-74. - Nonconforming uses.

- (a) *No expansion of nonconforming use.* Towers and communication facilities that are constructed, and antennas that are installed, in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.
- (b) *Preexisting towers and antennas.* Preexisting towers, communications facilities and antennas shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such preexisting facilities. New construction other than routine maintenance on a preexisting tower, communications facilities or antenna (other than as permitted in subsection 19-70(b)(4) shall comply with the requirements of this article. This article shall not be interpreted to legalize any structure or use existing at the time this article is adopted which structure or use is in violation of this Code prior to enactment of this article.
- (c) *Rebuilding damaged or destroyed nonconforming towers or antennas.* Notwithstanding section 19-73, bona fide nonconforming towers, communications facilities s that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the separation requirements specified in subsections 19-68(r) and 19-68(s). The type, height, and location of the tower, communications facilities and antennas onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within one hundred eighty (180) days from the date the facility is damaged or destroyed. If no permit is obtained or if such permit expires, the tower, communications facility or antenna shall be deemed abandoned as specified in section 19-73.

Sec. 19-75. - Annual reporting of information.

Each owner of a communications facility regulated under this article and including those previously existing structures which would have been regulated under this article, but specifically excluding towers and antennas which are fifty (50) feet or under in total height, shall, on an annual basis, furnish the city with such information as is required by the city to aid with the administration of this article, including notice to the FCC of intent to cease operation, all reports submitted to the FAA and FCC which contain information on RF and EMF emissions at the site, as well as changes in availability of space on any tower for collocation of additional antennas, plans to abandon a

position on a tower, thereby leaving space for the possible collocation of another antenna, plans and/or willingness to modify such tower and antenna structure so as to provide for the possibility of collocation, or intentions to abandon a tower structure, or other non-proprietary information as may be required by the city. The owner of such communications facility shall pay a yearly fee to the city in an amount as set by resolution of the city council from time to time to aid in the administration of this article. Upon written notice from the city to the owner thereof, the owner of any communications facility in existence at the time of January 27, 1998, which structure would otherwise be regulated by this article, shall register with the city, and shall provide such non-proprietary information as is deemed useful by the city for administration of this article. The city or its agents shall have authority to enter onto the property upon which a communications facility is located to inspect for the purpose of determining whether it complies with the building code and all other construction standards provided by this Code and federal and state law. This section is specifically deemed to have retroactive effect.

Sec. 19-76. - Remedies.

Any violation of any provision of this article shall result in any of the following remedies available to the city:

- (1) Commencing work without applying for and receiving appropriate approval, in accordance with the provisions of the city code, on private property, in any city right of way, or other city owned property shall result in a fine of one thousand dollars (\$1,000) per day for each day the violation exists, and the city may remove or cause the removal of any facility without notice to the owner thereof, and any contractor involved in such un-permitted work shall be banned from doing business in the city for a minimum of one (1) year.
- (2) If, upon inspection by the zoning administrator, it is determined that a communications facility fails to comply with any of the applicable standards of this code, the zoning administrator shall send a written notice of such violation to the owner of the communications facility and the owner of the property if such owner is different from the owner of such facility. Such notice shall be mailed by certified mail, return receipt requested.
- (3) The owner of the ~~tele~~communications facility, tower, or antenna and the owner of the property if such owner is different from the owner of such facility, shall have thirty (30) days after receipt of the violation notice to bring such facility into compliance. In the event such ~~tele~~communications facility, tower, or antenna is not brought into compliance within the required thirty-day period, the city may provide notice to the owners requiring such a facility to be removed.
- (4) In the event such communications facility is not removed within thirty (30) days after receipt of the notice of removal, the city may remove or cause the removal of such facility and file a lien against the property for the costs of removal.
- (5) In the event that the failure of the communications facility to comply with any such standards constitutes a present danger to persons or property, the city may abate the danger, provide notice to the owner as soon as reasonably practicable and recover the costs of abatement from the owner and file a lien against the property for the costs of abatement.
- (6) The city may pursue any and all available legal remedies to insure that a communications facility which fails to comply with this Code or which constitutes a danger to persons or property is brought into compliance or removed.

- (7) Any delay by the city in taking enforcement action against the owner of a communications facility and the owner of the property if such owner is different from the owner of such facility, shall not waive the city's right to take any action at a later time.
- (8) The city may seek to have the communications facility removed regardless of the owner's or operator's intent, and regardless of any permits, federal, state or otherwise, which may have been issued or granted.
- (9) A fine of between two hundred dollars (\$200.00) and five hundred dollars (\$500.00) per day for each day the violation is in existence may be assessed against the owners of the communications facility and the owner(s) of the property if such owner is different from the owner of such facility.
- (10) Whenever a communications facility is found to have interfered with public safety communications, then in that event the owners of same shall be liable to the city for all of the city's costs in determining, locating and enforcing the terms of this article. Further, such owner shall promptly take all reasonable steps necessary to correct and eliminate such interference within a reasonable period of time; provided, however, if such facilities materially interfere with the city's emergency transmitting and/or receiving equipment, such corrective steps shall be taken immediately upon notice by the city. If the owner of such facilities fails to take immediate corrective action, the city may do so at the owner's expense which amount shall become a debt due and owing the city by such owner.

Sec. 19-77. - Decisions.

Any decision rendered upon an application to locate, construct, or install a communications facility or for a special use for any such facility shall be written and shall include findings of fact supported by substantial evidence in a written record.

Sec. 19-78. - Appeals.

- (a) Appeals from any decision rendered upon an application to locate, construct, or install a communications facility via special use permit shall be filed pursuant to section 14.6 of the zoning ordinance.
- (b) Appeals from any decision of the city council rendered upon an application to locate, construct, or install a communications facility via special use permit for any such facility shall be filed with the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois, within thirty (30) days after the date the decision is rendered.

Secs. 19-79—19-99. - Reserved.