

Wayzata Planning Commission

Meeting Agenda

Monday, October 19, 2015

Community Room,
600 Rice Street East,
Wayzata, Minnesota

- 7:00 p.m.
1. **Call to Order and Roll Call, and Approval of Minutes**
 - a. Approval of the September 21 Planning Commission Workshop Minutes
 2. **Regular Agenda Public Hearing Items:**
 - a. Tree Preservation Ordinance – City of Wayzata
 - i. Amend existing City Code Chapter 710 regarding the Planting, Maintenance and Removal of Trees and adding City Code § 801.36 regarding Tree Preservation
 3. **Regular Agenda Old Business Items:**
 - a. 240 Manitoba Ave S – David Frey
 - i. Rear Yard and Lot Coverage Variance for a Second Garage Stall
 - b. Telecommunications Ordinance – City of Wayzata
 - i. Repeal existing City Code § 801.31 and replace with draft Telecommunications Ordinance
 3. **Other Items:**
 - a. Review of Development Activities
 - b. Other items

9:00 p.m.

4. Adjournment

NOTES:

¹ Time(s) are estimated and provided for informational purposes only.

² Members of the Planning Commission and some staff may gather at the Wayzata Bar and Grill immediately after the meeting for a purely social event. All members of the public are welcome.

1 **WAYZATA PLANNING COMMISSION**
2 **WORKSHOP MEETING MINUTES**
3 **SEPTEMBER 21, 2015**
4
5

6 **AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.**
7

8 Chair Vanderheyden called the meeting to order at 7:00 p.m.
9

10 Present at roll call were Commissioners: Vanderheyden, Gonzalez, Gruber, and Young. Absent
11 and excused were: Commissioners Gnos, Ramy, and Iverson. Interim City Planner Eric Zweber
12 from WSB Consulting, Management and Planning Intern Jason Peters, City Attorney David
13 Schelzel, and City Manager Heidi Nelson were also present.
14
15

16 **AGENDA ITEM 2. Workshop Items:**
17

18 **a. Approval of the August 17 Planning Commission and City Council Workshop**
19 **Minutes**
20

21 Commissioner Gruber made a motion, Seconded by Commissioner Gonzalez, to approve the
22 August 17, 2015 Planning Commission and City Council Workshop meeting minutes as
23 presented. The motion failed. 2-Ayes and 2-Abstain (Vanderheyden and Young).
24

25 **b. Approval of the August 17 Planning Commission Regular Meeting Minutes**
26

27 Commissioner Gruber made a motion, Seconded by Commissioner Gonzalez, to approve the
28 August 17, 2015 Planning Commission Regular Workshop meeting minutes as presented. The
29 motion failed. 2-Ayes and 2-Abstain (Vanderheyden and Young).
30

31 **c. Tree Preservation Ordinance Discussion**
32

33 Mr. Zweber reviewed the changes made to the new draft of the Zoning Code, Section 801.36
34 (Tree Preservation Ordinance) based on the discussions at the September 8, Planning
35 Commission workshop. In addition to the amendment to the Zoning Code, Staff also reviewed
36 and revised the existing tree regulations in Chapter 710 of City Code. He reviewed the revisions
37 that correlate with the new draft of the Zoning Code and those that would be revisions to existing
38 Chapter 710. He reviewed the differences in neighboring cities tree ordinances and presented a
39 chart representing a summary of tree growth.
40

41 Commissioner Gonzalez expressed concerns over having a reasonable balance of trees on a
42 property. She asked what would happen if a person is required to plant more than their parcel
43 can accommodate.
44

45 Mr. Zweber stated there is a section of the draft Ordinance that specifies if replacement cannot
46 occur on the site the person can either pay a fee or have the trees planted on public property.

1
2 City Attorney Schelzel explained according to the draft Ordinance, heritage trees can be removed
3 but they need to be replaced on a one to one caliper inch ratio. None of the ordinances
4 referenced prohibit landowners from removing trees altogether in connection with making
5 reasonable use of their property.
6

7 Chair Vanderheyden stated Chapter 710.06 of the draft Ordinance suggests City Staff can access
8 private property without notification and for any reason. He asked if this was found in other
9 ordinances as well.
10

11 City Attorney Schelzel stated Chapter 710.06 is part of the City's current Code and refers to trees
12 that are a nuisance or are considered dangerous. He clarified currently the City's Ordinance on
13 trees exists outside of the Zoning Code and was originally written as an extension of the City's
14 Nuisance Ordinance and tree preservation language was added later. The proposed approach is
15 that the tree preservation language would be removed from Chapter 710 and put into the City's
16 Zoning Code, and Chapter 710 would continue to contain language pertaining to a nuisance or
17 danger of trees.
18

19 Commissioner Gruber suggested adding language that the homeowner would be notified prior to
20 any entrance on private property. She asked if there were provisions or guidelines that spelled
21 out what would happen if a person or developer were to clear cut a parcel without notifying the
22 City.
23

24 City Attorney Schelzel stated the existing City Code does address this in Chapter 710. The City
25 has had to reference this in the past in order to fine an individual and use those funds to repair the
26 damage.
27

28 Commissioner Gonzalez stated the Ordinance should provide some way for exceptions to be
29 made for removal of trees for situations such as safety concerns without the added cost of
30 replacing these trees. She provided an example of removing several large trees from her yard
31 because there was a danger of them falling on her home and it cost a significant amount of
32 money to have them removed.
33

34 Mr. Zweber stated on page 7 of the Ordinance, Section 801.36.08.D, there is a listing of trees
35 that are exempt from replacement. The Planning Commission could choose to add an exemption
36 to this list to address specific situations such as safety concerns.
37

38 City Attorney Schelzel stated the trees in the example presented by Commission Gonzalez could
39 probably have been removed under the provisions on nuisance trees. He stated Staff would be
40 sure to include this situation in the Zoning Ordinance Section 801.36.08.D.
41

42 Commissioner Gonzalez stated the Ordinance also requires a City certified arborist be used. She
43 clarified this requirement is not easy to find in the Ordinance and should be made obvious along
44 with it being easy for people to find a list of approved arborists.
45

1 Chair Vanderheyden asked if the administration of the funds received in lieu of tree
2 planting/replacement was also included in the Ordinance.

3
4 Commissioner Gonzalez stated there is a State Statute that states any excise fees collected have
5 to be directly linked to the need created and these funds can only be used for that purpose.

6
7 Mr. Zweber stated Section 801.36.13 does start to address fees in lieu of planting trees. Staff and
8 City Attorney Schelzel will review this section and clarify what the funds could be used for.

9
10 Chair Vanderheyden asked how much public land was available in Wayzata to plant trees.

11
12 Ms. Nelson stated on an annual basis the City budgets money for tree replacement throughout the
13 City as part of the General Fund-Operating costs. The City can plant trees in parks, right-of-way
14 areas, and along the lake front. If a developer or land owner were unable to plant the required
15 number of trees on their parcel the City would be able to use these trees for their annual
16 replacement or in additional areas of the City for beautification.

17
18 City Attorney Schelzel stated from a legal stand point these fees should be treated similarly to
19 parkland dedication fees, where the City requires people to either dedicate land or pay a fee in
20 lieu of this. There should be a nexus between money paid by a property owner and what it will
21 be used for. His general recommendation would be that these funds be put into a separate fund
22 and be used to buy, plant, and maintain trees for the City.

23
24 Commissioner Gonzalez asked what the industry standard warranty was for trees.

25
26 Mr. Zweber stated the industry standard for trees purchased at a nursery is 1-year. At the last
27 meeting, the Planning Commission recommended extending this beyond 1-year.

28
29 Commissioner Gonzalez asked how this would be enforced.

30
31 Mr. Zweber stated Section 801.36.14 addressed the financial guarantee for a 3-year survival of
32 plantings. This provides an expectation that the developer or homeowner maintain the trees that
33 are planted.

34
35 Chair Vanderheyden expressed concerns about the added expense for a homeowner with the
36 extended guarantee time.

37
38 Commissioner Young stated this also results in a large amount of money being tied up for a
39 homeowner. This guarantee is more understandable in the context of a development.

40
41 City Attorney Schelzel asked if Section 801.36.14 was intended to apply to everyone, regardless
42 of the number of trees that were being replanted. He also asked how the financial guarantee
43 would work if there was not a need to issue a certificate of occupancy.

44
45 Mr. Zweber stated the intent had been to apply this to everyone but the Planning Commission
46 can provide other direction to Staff. He clarified it is difficult to hold a certificate of occupancy

1 and in most cases a fee is collected. The City's Building Official would recommend removing
2 this language for this section because trees are not in the building code.
3

4 Chair Vanderheyden stated in Section 801.36.01.D the word "minimal" should be removed. He
5 asked where the incentives referenced in Section 801.36.01.E could be found.
6

7 Mr. Zweber stated the incentive would be that a person would replace less if they were creative
8 and avoid removing trees where ever possible.
9

10 City Attorney Schelzel stated that purpose statements are provided at the beginning of
11 ordinances to lay out the rationale and basis for the City to use its power to implement the
12 ordinance, and do not generally impose anything. He stated the City is also trying to encourage
13 people to plant more trees by stating these as minimal standards in Section 802.36.01.D.
14

15 Chair Vanderheyden suggested changing the word "minimal" to "minimum" in Section
16 801.36.01.D.
17

18 Commissioner Gruber asked if it was the intent of the City to have a City Forester.
19

20 Ms. Nelson stated the City utilizes the services of Manuel Jordon as City Forester on a contract
21 basis. The City also has certified tree inspectors.
22

23 Chair Vanderheyden asked if the intent would be to combine Chapter 710 and Zoning Code
24 801.36.
25

26 City Attorney Schelzel clarified the present proposed changes are that 801.36 would be a new
27 section of the Zoning Code, Chapter 801, and this new section would have to do with tree
28 preservation. Chapter 710 would remain in City Code but its focus would be dealing with
29 nuisance and diseased trees.
30

31 Chair Vanderheyden stated the City had several people looking to develop single properties. He
32 suggested including this in the definition of Developer in Section 801.36.02.
33

34 Mr. Zweber asked what the difference would be between a developer and a homeowner in the
35 case of a single unit development because a homeowner could hire a contractor to build their
36 home.
37

38 City Attorney Schelzel asked if in Rosemount only developers had to comply with the tree
39 preservation code.
40

41 Mr. Zweber stated homeowners had to comply when they pulled a building or grading permit.
42

43 City Attorney Schelzel asked what rules applicable to larger developers would the City want to
44 apply to a single homeowner or someone who is developing only one unit.
45

1 Mr. Zweber stated the expectation of the developer was they are installing more than just the
2 house. Typically developers are doing public streets and utilities to service the area and a
3 homeowner or contractor would have these things in place already.

4
5 Chair Vanderheyden stated the definition does specify "by platting". He asked if this would be
6 enough to differentiate a developer from a homeowner. He suggested the definition for Forester
7 in Section 801.36.02 be reconciled with the definition of Forester in other sections of the Zoning
8 Code and Ordinances. He asked if it was assumed that plats would follow the regular process of
9 Planning Commission review and recommendation prior to moving to the City Council for
10 approval in Section 801.36.04.A, the second sentence in the last paragraph. In this same
11 sentence the word "b" should read "be". He asked if the last sentence in this section was
12 something that was specific to Rosemount and should be removed from the draft.

13
14 Mr. Zweber stated this was something that was specific to Rosemount and these references
15 would be removed prior to the Planning Commission's final review.

16
17 Chair Vanderheyden stated in Section 801.36.08.A, the first line, he would recommend removing
18 the word "Wayzata" because these trees are not unique to Wayzata but they are unique.

19
20 Mr. Zweber stated this had been included in order to specify the definition was for Wayzata and
21 not all definitions of heritage trees are the same.

22
23 City Attorney Schelzel suggested covering why heritage trees are important to Wayzata in either
24 the purpose section or the definition sections.

25
26 Chair Vanderheyden stated he would prefer to call them "Wayzata Heritage Trees" because this
27 is a more significant term. He asked if the standard of 10% established in Section 801.36.08.C
28 was acceptable to the Commission. He stated he had been trying to reconcile this with the limits
29 in Chapter 710.

30
31 Commissioner Gonzalez stated in Section 801.36.08.C the term business owner is used and this
32 is not defined.

33
34 Chair Vanderheyden asked if this referred to commercial property owner.

35
36 Mr. Zweber stated this was the intent and it would be added to the definitions.

37
38 Chair Vanderheyden stated in Section 801.36.08.D, Staff should add language about storm
39 damaged trees or trees deemed unsafe by the City Arborist would be exempt from replacement.
40 He expressed concerns about the level of discretion afforded public projects in Section
41 801.36.08.D.4.

42
43 Mr. Zweber stated it is easier for local roads and utilities to be more creative in their designs to
44 work around trees. The City has already adopted the Transportation Plan and the Regional entity
45 has adopted the Regional Trail Corridor so these infrastructure components are set where as a

1 smaller sewer line in a local street may not be part of this plan and can be designed to
2 accommodate existing structures and trees.

3
4 Chair Vanderheyden asked how the Ordinance covered entities such as the Met Council deciding
5 to clear cut a mile long section in order to finish their project. He stated they should be held to
6 the same standard as a homeowner for replacing these trees.

7
8 Ms. Nelson stated they would need to check what authority a municipality would have with
9 another agency, which controls the infrastructure in the City's right-of-way.

10
11 City Attorney Schelzel stated he would investigate this further and provide additional feedback
12 for the Commission. He clarified as the language is now, it does not pose a legal problem but he
13 would want to look at the implications if it were removed or what language would be needed to
14 make the standards apply to entities such as the Met Council. He asked Mr. Zweber if there was
15 a difference between pruning a tree and removing a tree.

16
17 Mr. Zweber stated if the tree is being pruned to maintain it and it survives then there would be no
18 replacement but if it were to die because of the pruning or maintenance then it would need to be
19 replaced.

20
21 Commissioner Gonzalez asked if Section 801.36.09.B applies to both developers and
22 homeowners.

23
24 Mr. Zweber stated this would apply to both developers and homeowners and this would be
25 clarified in Section 801.36.09.B.

26
27 Chair Vanderheyden stated Section 801.36.10 differs significantly from Chapter 710. The City
28 Arborist recommended there should not be greater than 10% similarity among new plantings.

29
30 City Attorney Schelzel asked if the point was that the arborist recommends diversity.

31
32 Chair Vanderheyden stated previous discussion had been to not specify a percentage and there
33 was no distinction between conifers or deciduous hardwoods.

34
35 Mr. Zweber stated being more specific would make this requirement harder to implement on a
36 homeowner because they would be planting less trees than a developer.

37
38 Commissioner Gruber asked if the City Forester had reviewed the drafts.

39
40 Mr. Zweber stated the City Forester was currently reviewing the drafts and would have his
41 comments available at the next meeting.

42
43 Commissioner Young suggested language that the replacements be consistent with the
44 recommendations of the City Forester.

45
46 Commissioner Gruber agreed stating the City Forester is a City asset that should be utilized.

1
2 Commissioner Gonzalez stated in Section 801.36.10.A the Commission had previously discussed
3 a size of 2.5-inches instead of 3-inches as recommended by the City Forester because the 2.5-
4 inch trees survive better when replanted and after a couple of years there is no difference
5 between a 2.5-inch tree and a 3-inch tree.

6
7 Mr. Zweber stated he had reviewed recent site plans that had been approved and these included
8 planting 3-inch trees.

9
10 City Attorney Schelzel stated the City Forester would be able to provide input on Section
11 801.36.10, including the recommended size for replacement trees and reconciling this Section
12 with Chapter 710.

13
14 Chair Vanderheyden suggested the acceptable tree replacement species list in Section 801.36.11
15 and Chapter 710 be reconciled. In Section 801.36.12.C change the word "Rosemount" to
16 "Wayzata".

17
18 Commissioner Young stated if a replacement tree must come from the approved list and a
19 heritage tree must be replaced with the same species then there should be language that allows a
20 different species to be planted if the species of the removed tree is not on the approved
21 replacement tree list.

22
23 Mr. Zweber stated the language in Section 801.36.11 should allow for this: "the City may, at its
24 discretion, approve additional species if circumstances such as soil condition, hydrology,
25 topography, or recent tree disease warrant."

26
27 Commissioner Young expressed concerns that Chapter 710.05.e required the City Forester to
28 make a determination on ash trees prior to being removed and this requirement was included
29 with any other trees susceptible to disease such as Dutch Elm or Oak.

30
31 Mr. Zweber stated the intent of Chapter 710.05.e was the City would be looking for a policy
32 from the City Forester on what the course of action should be in preparation for Emerald Ash
33 Borer.

34
35 Ms. Nelson stated the City does have an EAB program that has been reviewed by the City
36 Council. If the City has inventoried the public ash trees and if there are ash trees in the public
37 areas that are not good quality they are targeted for replacement with other species. The City is
38 also treating some trees that would significantly impact the area if there lost. Once a tree is
39 infected with EAB it quickly becomes a nuisance so the City needs to have a plan on how to deal
40 with these diseased trees. The City has also done some education on what homeowners can do to
41 prevent EAB. Staff would work with the City Forester to assure the language in Chapter
42 710.02.e reflects the steps the City is taking.

43
44 City Attorney Schelzel stated Chapter 710.02 lists different types of nuisances that can be abated
45 but does not go into how to deal with these nuisances proactively.

1 Chair Vanderheyden stated in Chapter 710.08.a the Commission had discussed notices being sent
2 certified mail to ensure reasonable efforts are made to reach a homeowner. He expressed
3 concerns with Chapter 710.06 that the "City Forester or duly authorized representative may enter
4 upon private premises at any reasonable time for the purpose of carrying out any of the duties
5 assigned under this Chapter."

6
7 City Attorney Schelzel suggested the Commission add notification language to this section.
8

9 The Planning Commission would review the Tree Preservation Ordinance and Zoning Code
10 changes at the October 19, 2015 meeting.
11

12 **d. Alternative Energy Ordinance Discussion**
13

14 Mr. Peters stated the Planning Commission had been presented with examples of local
15 alternative energy ordinances and a power point presentation regarding the three types of energy
16 conservation systems most commonly addressed at their July 20 meeting. He reviewed
17 additional alternative energy ordinances from surrounding communities.
18

19 Chair Vanderheyden asked if an applicant could do anything if the City did not have an
20 Ordinance in place.
21

22 City Attorney Schelzel stated the City would reference those regulations that are on the books
23 when looking at requests.
24

25 Mr. Peters stated Staff is working on setting up time for the Commission to discuss these
26 alternative energy sources with experts in order to gain more knowledge.
27

28 Commissioner Young suggested also having someone provide information on best practices for
29 each of these energy sources so the Commission would have a base starting point when drafting
30 these ordinances.
31

32 Commissioner Gonzalez stated the Ordinances from Orono and Watertown would not apply to
33 Wayzata. She asked if there was additional information on community solar gardens and the
34 effect of wind energy turbines on wildlife.
35

36 Chair Vanderheyden asked about the size of the turbines that could be permitted in Wayzata
37 based on the average parcel size.
38

39 Mr. Peters stated Wayzata would more than likely be considering more of the building mounted
40 equipment.
41

42 Chair Vanderheyden stated he liked Maple Grove's resolve with geothermal and solar being
43 defined as permitted accessory uses whereas wind was a conditional use in all cases. He also
44 liked the restriction on sound in the Maple Grove Ordinance. He felt that light flicker protection
45 and vibration protection would also be good to include to protect the community.
46

1 Mr. Peters pointed out that Maple Grove does allow for larger turbines if there is a shared use.

2
3 Mr. Zweber stated another thing to consider and possible address with wind turbines would be
4 ice throw in the winter months. Ice collects on the turbine blades and can be thrown a distance
5 up to three times the length of the blade. This would mean this area should be cleared of
6 anything that could be damaged.

7
8 Chair Vanderheyden stated the Orono Ordinance had the best description and definition section.

9
10 Mr. Peters stated for the next steps he would work on setting time for experts to meet with the
11 Planning Commission to provide additional background and information as it pertains to
12 Wayzata.

13
14 Commissioner Gonzalez stated she would like to see a draft purpose statement and definitions
15 prepared for the Commission to begin reviewing.

16
17 Commissioner Gruber suggested having the experts present to the Commission on each
18 alternative energy source and the implications they would have in Wayzata prior to drafting a
19 purpose statement and definitions.

20
21 Commissioner Young agreed an overview of each energy source and a discussion on best
22 practices for a community the size of Wayzata would be beneficial in starting the process.

23
24
25 **AGENDA ITEM 3. Other Items:**

26
27 **a. Review of Development Activities**

28
29 Mr. Zweber stated the October 5 agenda would include three public hearings: the design review
30 of a medical office building at 1120 Wayzata Blvd. E., a garage variance request for 240
31 Manitoba, and the Telecom Ordinance. Other development activities included a City Council
32 work session on a proposal by the Beltz's family for the Gold Mine and Mail Center property.

33
34 Commissioner Gonzalez asked about Mr. Hoyt's property and the concept that had been
35 presented at a Council meeting.

36
37 Ms. Nelson stated there have been further discussions at the Staff level. The City's interest in
38 the concept would be the potential for the provision of public parking. The applicants have been
39 requested to provide additional information on the partners that would be involved in the
40 potential project and what the project would look like.

41
42 **b. Other Items**

43
44 Ms. Nelson stated the City has hired Jeff Thompson as the new Director of Building and
45 Planning. He will be starting with Wayzata October 15 and he will be attending the October 5
46 Planning Commission meeting to observe the process in Wayzata.

1
2 Commissioner Gonzalez stated she had attended the Council meeting discussing the concepts for
3 Mr. Hoyt's and adjacent property, and also the vote for the variance request for Mr. Gnos. This
4 variance request was approved at a subsequent Council meeting.
5

6
7 **AGENDA ITEM 4. Adjournment.**
8

9 There being no further business, Commissioner Gruber made a motion, seconded by
10 Commissioner Young, to adjourn the meeting. The motion passed unanimously.
11

12 The meeting was adjourned at 9:27 p.m.
13

14 Respectfully submitted,
15

16 Tina Borg

17 *TimeSaver Off Site Secretarial, Inc.*



Planning Report
October 19, 2015
Wayzata Planning Commission Meeting

File Case No:	PR 2015-16
Applicant:	City of Wayzata
Address of request:	N/A
PID number:	N/A
Prepared By:	Eric Zweber, Interim City Planner
Project Summary:	Amend existing City Code Chapter 710 regarding the Planting, Maintenance and Removal of Trees and adding City Code § 801.36 regarding Tree Preservation

Section 1: Background.

One of the City's goals for 2015 is to adopt an Ordinance that protects old and important trees and requires replacement of trees removed called the Tree Preservation Ordinance. While creating the Tree Preservation Ordinance, the City has also reviewed amendment to City Code Chapter 710 Planting, Maintenance and Removal of Trees to maintain the abatement procedure for diseased or hazardous tree while moving any tree preservation requirement to the new Section 801.36 within the Zoning Code.

The draft Tree Preservation ordinance was reviewed during Planning Commission workshops held on September 8 and September 21. A number of changes were recommended to the draft Ordinance and the request was made for Manuel Jordan, the City's tree consultant, to review and make recommendations to the Ordinance. Both the changes based on Planning Commission comments and the comments from Manuel Jordan are described below in this report.

To aid in reviewing the proposed changes, Attachment A is the Report and Recommendation to the City Council including a clean copy of the draft Ordinance and Attachment B is a redline copy of the draft Ordinance showing all the changes proposed to Chapter 710 and the changes to Section 801.36 since the September 21 Planning Commission workshop.

Public Notice

A Notice of Public Hearing regarding the addition of Chapter 801 Section 36 "TREE PRESERVATION" was published in the Lakeshore Weekly on October 6, 2015.

Section 2. Summary of Issues.

2.1 Zoning Analysis.

Both the Planting, Maintenance and Removal of Trees (Chapter 710) regulations and the Tree Preservation (Section 801.36) will apply to the entire City regardless of zoning district. Chapter 710 is a part of the overall City Code and Section 801.36 will become part of the Zoning Ordinance.

While the Tree Preservation applies to the entire City, it has different standards for land developers (individuals or companies that subdivide land) and homeowner or commercial property owners. The two standards apply because development has a greater impact on the surrounding land (through the installation of utilities and the creation of roads and stormwater infrastructure) than a homeowner would if they were construct an addition or otherwise improve their property.

2.2 Manuel Jordan Comments.

Chapter 710:

- 710.2 g: Clarified how to determine the width of a tree.
- 710.2 h: Removed "drip line" and replaced with "critical root zone". These two ideas are similar, but the root zone is closer to the intent of the Ordinance.
- 710.03, 710.4 and others: Changed "disease" to "pathogen". The Emerald Ash Borer is a bug, not a disease. Pathogen better addressed the intent of this Chapter.
- 710.5: Removed scientific definitions and replaced with "as defined by the Minnesota Department of Agriculture".
- 710.06: Add the qualifier of "field diagnosis".
- 710.08: Increased the timeline for abatement slightly.
- 710.10: Added that the transport of wood must follow the State Statute.
- 710.16: Added that the removal of dead or hazardous trees does not need a tree removal permit.

Section 801.36:

- 801.36.02 Definitions: Added critical root zone and clarified how to determine the width of a tree similar to the changes in Chapter 710. Also slightly modified the definition of a Heritage Tree to value hardwoods and conifers (25" or greater) over softwoods (30" or greater).
- 801.36.05, 801.36.06 and 801.36.07: Added language to protect the critical root zone.
- 801.36.06: Lengthened the Oak pruning restriction.

- 801.36.07: Clarified the intent of safety pruning.
- 801.36.08 D. 4.: Added that removal of trees that pose a risk are exempt from replacement requirements.
- 801.36.09: Doubled the replacement requirement from 1" to 2" inches for each Heritage Tree and from 0.5" to 1" for each Significant Tree.
- 801.36.10: Decrease replacement trees from 3" to 2.5" trees.
- 801.36.11: Added additional acceptable tree species.
- 801.36.11 and 801.36.12: Changed disease to pathogen.

Staff discussed the diversity of replacement tree species to be planted (801.36.10) with Mr. Jordan. Mr. Jordan stated that he is comfortable with the proposed standard of at least 25% conifers and at least 25% hardwood. While the goals would be that the replacement would not be more than 10% from any one species, 20% from any one genus and 30% from and one family, this goal is not practical on small sites or on individual lots. Soil conditions on small sites may not be practical for the desired diversity and the limited number of replacement trees expected in a home addition may not achieve the goal. Mr. Jordan feels that the 25% conifer and 25% hardwood requirement can be achieved on these small sites.

2.3 Planning Commission Comments.

Chapter 710:

- 710.06: Added language requiring the City attempt to contact the property owner before entering their property.

Section 801.36

- 801.36.02: Changed the definition of a City Forester to be the same Chapter 710.
- 801.36.04 A.: Changed the appeal to the Board of Adjustments and Appeals.
- 801.26.04 B. and others: Changed Business Owner to Commercial Property Owner.

2.4 Comments that Did Not Result in Changes.

Section 801.36

- 801.36.08 D. 5.: Regional infrastructure remains exempt from replacement. City Attorney Schelzel has prepared a memorandum (**Attachment E**) on the exemptions that utilities or other governmental agencies may have. Additionally, staff does not support removing this provision for the City itself or for a developer. Regional infrastructure by its definition serves properties outside of the property in which that infrastructure is located. Punishing an individual property owner for a benefit that is extended to other property seems unfair.
- 801.36.13: City Attorney Schelzel will provide a verbal update on the restriction on the use of the funds received as fee-in-lieu of tree replacement.

Section 3. Action Steps.

After considering the items outlined in this Report, the Planning Commission should pursue one of the following options as an action step:

1. Approve the *Planning Commission Report and Recommendations*.
2. If the Commission wishes minor modifications to Ordinance or the *Report and Recommendations*, the Planning Commission should include those minor modifications within the motion.
3. If the Commission wishes to significantly modify the Ordinance or the *Report and Recommendations*, the Commission should direct staff to prepare a revised Report and Recommendations for review and adoption at the next Commission meeting.

Attachments:

Attachment A: Report and Recommendation

Attachment B: Redline Chapter 710

Attachment C: Redline Section 801.36

Attachment D: Schelzel Memorandum



WAYZATA PLANNING COMMISSION

October 19, 2014

REPORT AND RECOMMENDATION ON AN ORDINANCE AMENDING THE WAYZATA ZONING ORDINANCE TO ADD A NEW SECTION 36 ON TREE PRESERVATION AND AMENDING WAYZATA CITY CODE CHAPTER 710 ON PLANTING, MAINTENANCE AND REMOVAL OF TREES

RECOMMENDATION

APPROVE

REPORT

Section 1. BACKGROUND

- 1.1 General. The City has engaged in the study and implementation of a new ordinance to protect, preserve, and enhance the natural environment of the City and to encourage a resourceful and prudent approach to the development and alteration of wooded areas. The City has held several Planning Commission and City Council workshops and forums on the matter. Staff has reviewed regulatory frameworks and policy considerations, and has received the input of the City's Forester. Based on the foregoing, staff has prepared a draft ordinance attached to this Report as Attachment A which would be an amendment to the City's existing Zoning Ordinance and Chapter 710 of City Code (the "Proposed Amendment").
- 1.2 Public Hearing. The Planning Commission held a public hearing on the Proposed Amendment on October 19, 2015. The Notice of Public Hearing was published in the *Lakeshore Weekly* on October 6, 2015.

Section 2. LEGAL AUTHORITY AND STANDARDS

- 2.1 City Council has the discretion and authority under state law and City Code to amend the City's Zoning Ordinance. Minn. Stat. Sec. 462.357; Wayzata City Code Section 801.03. A zoning ordinance amendment may be initiated by the governing body, the planning agency or by a property owner. Minn. Stat. Sec. 462.357, Subd. 4; City Code Section 801.03.
- 2.2 Under the City's Zoning Ordinance, the City Council acts on any proposed amendment upon receiving the report and recommendation of the Planning Commission. Sec. 801.03.2. In considering a proposed amendment to the Zoning Ordinance, the Planning Commission shall consider the possible adverse effects of the proposed amendment. Its judgment shall be based upon (but not limited to) the following factors:
1. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
 2. The proposed use's conformity with present and future land uses of the area.
 3. The proposed use's conformity with all performance standards contained herein (i.e., parking, loading, noise, etc.).
 4. The proposed use's effect on the area in which it is proposed.
 5. The proposed use's impact upon property value in the area in which it is proposed.
 6. Traffic generation by the proposed use in relation to capabilities of streets serving the property.
 7. The proposed use's impact upon existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity.

Wayzata City Code Section 801.03.2.F.

Section 3. Findings

- 3.1 Based on the studies and reports of City Staff, and comments and information presented at the workshops and Public Hearing on the Application, the information provided by the City Forester, the Planning Commission of the City of Wayzata makes the following findings with respect to the Proposed Amendment:

1. The Proposed Amendment would not allow a use that would contravene any specific policies and provisions of the official City Comprehensive Plan.
2. The Proposed Amendment would only allow uses that conform to present and future land uses in the City's business and commercial districts.
3. The Proposed Amendment would not allow uses that do not conform with the performance standards contained in the Zoning Ordinance (parking, loading, noise, etc.).
4. The Proposed Amendment would not allow uses that would have a negative impact on the areas in which they are proposed in that the Proposed Amendment would reasonably regulate and preserve the City's vital natural resources and the urban forest.
5. The Proposed Amendment will not negatively impact upon property values in the City.
6. The Proposed Amendment will not allow any use that would have a negative impact traffic generation in the City.
7. The Proposed Amendment will not allow a use that would negatively impact existing public services and facilities and would provide a framework for needed telecommunications services in the City.

Section 4. Recommendation

- 4.1 Proposed Amendment. Based on the Findings of this Report, the Planning Commission recommends approval of the Proposed Amendment, as set forth in Attachment A.

Adopted by the Wayzata Planning Commission this _____ day of October, 2015.

Chair, Planning Commission

Attachment A

Proposed Amendment

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CHAPTER 710

~~PLANTING,~~ MAINTENANCE AND REMOVAL OF TREES

710.01. Purpose. The Wayzata City Council has determined the preservation of trees growing on public and private property are necessary to maintain the general welfare of the public and is set forth more fully in Section 710.13 of this Chapter, and Section 801.36 of the Zoning Ordinance. In order to maintain and enhance the quantity and quality of trees growing within the City, this Chapter is adopted to regulate the ~~planting,~~ maintenance and removal of trees within the City of Wayzata by: (1) Defining the duties and responsibilities of the City Forester as the agent enforcing regulations relating to the planning, ~~planting,~~ maintenance and removal of trees within the City of Wayzata; (2) Providing for the issuing of permits and/or licenses for any maintenance and/or removal of trees within the City of Wayzata; (3) Providing for the pruning and removal of trees on private property that endanger public safety; (4) Providing for standards and specifications of all policy concerning trees on public property; and ~~(5) Providing for standards and specifications of a care protection policy concerning trees in subdivision properties; and~~ ~~(56)~~ Providing for standards and specifications for care protection policy concerning trees within project construction limits.

(Ord. ~~xxxx 614 [5-27-1999]~~)

710.02. Definitions. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

a. "Applicant" shall mean any person applying for any City permit or approval that would result in the construction or improvements on land within the City that contains Significant Trees.

b. "Forester" shall mean that person appointed as City Forester by the Wayzata City Manager.

~~c. "Preservation Plan" shall mean a plan which is prepared for a proposed development or redevelopment project by a Minnesota registered surveyor which sets forth the project area, locates proposed improvements and locates all Significant Trees located in the project area. It shall indicate which Significant Trees are to be preserved and which are to be removed as a result of the construction of the project. Significant Trees' diameters, heights (where applicable) and species shall be noted in the Preservation Plan.~~

~~cd.~~ "Code Enforcement Officer" shall mean the City Manager or designee.

~~de.~~ "Significant Trees" shall mean healthy trees (as determined by the City Forester) which are six (6) inches in diameter (DBH) for a hardwood deciduous trees, twelve (12) inches DBH or greater than ~~twelve~~eight (128) feet in height for coniferous trees.

f. "Preservation" shall mean maintaining in its natural condition and location any tree.

g. "DBH" shall mean diameter of trees at breast height. It is that point 4½ feet (54 inches) above the ground at which the diameter of a tree shall be measured. Trees that branch near or below 4 ½ feet from the ground will be measured at the narrowest point below 4 ½ feet. Trunks that originate from the ground shall be considered separate trees. The City Forester shall have the final say in the DBH calculation if there is a question of how it is to be measured.

h. "Critical Root Zone" shall mean the minimum area around a tree that must remain undisturbed. The critical root radius is calculated by measuring the tree's diameter at breast height. For each inch of tree diameter, 1.5 feet of root zone radius must be protected. For example, if a tree's DBH is 10 inches, then its critical root zone radius is 15 feet (10 x 1.5 = 15).

(Ord. ~~xxxx 614 [5-27-1999]~~)

710.03. Duties and Qualifications of the Forester.

a. **Duties.** The Forester, as appointed by the City Manager, for the purposes of this Chapter shall identify diseased and hazardous trees that threaten the health and safety of the public and coordinate all activities of the City relating to the control and prevention of tree- ~~pathogens/diseases.~~ It shall further be the duty of the Forester and the City Manager and/or his/her designee to identify and describe significant trees in any proposed subdivision or development project and to assist planners, developers, and architects in the development of a tree preservation plan for each construction development project.

b. **Qualifications of the Forester.** The qualifications of the Forester shall be, as a minimum, those qualifications prescribed for certified arborists by the Minnesota Society of Arboriculture or by the Commissioner of Agriculture.

(Ord. ~~xxxx 614 [5-27-1999]~~)

710.04. Disease-Pathogen Control Program. It is the intent of the City to conduct a program of plant pest control pursuant to the authority granted by Minn. Stat. §18.022. This Chapter provides full power and authority over all trees, plants and shrubs located within the street rights-of-way, parks and public places of the City; and to trees located on private property that constitute a hazard or threat as described herein; and trees that fall under the tree protection policy as described in Section 710.17 of this Chapter.

(Ord. ~~xxxx 614 [5-27-1999]~~)

710.05. Nuisances Declared. The following things hereby are declared to be public nuisances whenever they may be found within the City:

- a. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus (as defined by the Minnesota Department of Agriculture) ~~Ceratoeystis Ulmi (Buisman) Moreau~~ or which harbors any of the elm bark beetles known by the MN Department of Agriculture to transmit the disease. ~~Seolytus Multistriatus (Eichh.) or Hylurgopinus Rufipes (Marsh).~~
- b. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or sprayed with an effective Dutch Elm insecticide, or disposed of in a manner prescribed by the Commissioner of Agriculture.
- c. Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt disease fungus , as defined by the Minnesota Department of Agriculture ~~Ceratoeystis Fagacearum.~~
- d. Any infected oak tree or part thereof, including logs, branches, stumps, firewood or other oak material unless all bark material is removed and disposed of in a manner prescribed by the Commissioner of Agriculture.
- e. Any ash tree at risk infestation of the Emerald Ash Borer (EAB) as determined by the City Forester.
- fe. Any living or standing tree or shrub or part thereof infected to any degree by any organism to be controlled as set forth and described by the Commissioner of Agriculture.
- gf. Any dead, dying, decaying or living tree, shrub or parts thereof that interferes with the public use of any public thoroughfare or right-of-way.

It shall be unlawful for any person to permit any public nuisance as defined in this Section to remain on any property owned or controlled by him within the City. Such a nuisance shall be abated in the manner prescribed by this Chapter. Abatement shall be at the discretion of the City Forester in accordance with all State Law and City Code.

(Ord. ~~xxxx 614 [5-27-1999]~~)

710.06. Inspection and Investigation. The City Forester shall inspect all premises and places within the City as often as practicable to determine whether any nuisances as described in this Chapter exist thereon. The Forester shall investigate all reported incidents of diseased trees within the City. The Forester or duly authorized representative(s) may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this Chapter. Except for cases of emergencies or the imminent threat of personal or property

damage, the City shall notify the property owner at least five (5) days prior to the inspection through certified mail to the address listed on the Hennepin County tax records. The inspection may occur after five (5) days even if the certified letter is undeliverable or returned. The City Forester ~~shall~~may, upon finding conditions indicating disease infestation is suspected and unconfirmed by a field diagnosis, immediately send appropriate specimens or samples to the Commissioner of Agriculture for analysis or take such other steps for diagnosis as may be recommended by the Commissioner. Except as provided in Section 710.08, or in the case of a positive field diagnosis, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

(Ord. ~~xxxx614~~ [5-27-1999])

710.07. Abatement of Nuisances. In abating the nuisances defined in Section 710.05, the Forester shall cause the infected tree or wood to be sprayed, removed, burned or otherwise effectively treated so as to destroy and prevent as fully as possible spread of the disease. Such abatement shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.

(Ord. 614 [5-27-1999])

710.08. Abatement Procedure. Whenever the Forester finds with reasonable certainty that an infestation defined in this Chapter exists in any tree or wood on any public or private property within the City, he shall proceed to abate said nuisance as follows:

a. If the Forester finds that the danger of infestation of other trees is not imminent the Forester shall notify in writing the person(s) owning or controlling the property upon which the nuisance is located that the nuisance must be abated within ~~fifteen~~twenty one (21) days from the date of the mailing. If no action to abate the nuisance is taken within this period the Forester then shall make a written report of findings to the City Council. The Council shall take action to abate the nuisance, and it may proceed to recover the costs of such abatement as provided in Section 710.09.

b. If the Forester finds that the danger of infestation of other trees is imminent the Forester shall notify in writing the person(s) owning or controlling the property upon which the nuisance is located that the nuisance must be abated within ~~five~~seven (7) days from the date of the mailing, and shall report findings to the City Manager. If no action to abate the nuisance is taken within this period the Forester then shall make a written report of actions to the City Council, which may proceed to recover the costs of such abatement as provided in Section 710.09.

c. If the Forester finds that the danger of infestation of other trees is imminent the Forester shall notify in writing all persons owning or controlling property upon which is located trees in danger of becoming infested. Within this notice the Forester shall state

that action, if any, which should be taken to protect the trees in danger of becoming infested and the period within which such action must be taken. If no such action is taken within this period the Forester then shall take appropriate action to protect these trees as an emergency measure and shall make a written report of this action to the City Council, which may proceed to recover the costs of such action as provided in Section 710.09.

(Ord. ~~xxxx614~~ [5-27-1999])

710.09. Special Assessment Procedure. Upon receipt of a report from the Forester required by Section 710.08, subsections a. through c., the City Council may pass a resolution to provide for recovering the costs of abatement of a nuisance and/or for recovering the costs of protecting threatened trees by a special assessment procedure. Before such a resolution may be approved the City Manager shall notify all affected property owners by mail that such a procedure is under consideration prior to the meeting thereon. This notice shall state the time and place of the meeting, the abatement action proposed to be taken or already taken, the estimated or actual cost of such abatement and the proposed basis of assessing such cost. At this meeting all affected property owners shall have the right to be heard with reference to the proposed assessments and assessment procedure. The Council thereafter by resolution may approve such special assessments for the purposes specified herein.

The Forester shall keep a record of all abatement activities and all abatement costs for which special assessments are to be made or may be made, stating the description of the properties involved and the amounts chargeable to each property. On or before October 10th of each year the City Manager shall list the total unpaid charges for such abatement activities against each separate property to which they are attributable under this Chapter. The City Council then may spread the charges or any portion thereof against the property involved as a special assessment for certification to the Hennepin County Auditor and for collection the following year along with current taxes.

(Ord. 614 [5-27-1999])

710.10. Transporting Diseased Wood. It shall be unlawful for any person to transport within the City any diseased wood without first having obtained a permit therefore from the Forester. The Forester may grant such a permit only when the purposes of this Chapter will be served thereby. The transporting of diseased wood out of the City shall be governed by current State Statutes related to transportation of infected material.

(Ord. ~~xxxx614~~ [5-27-1999])

710.11. Interference Prohibited. It shall be unlawful for any person to prevent, delay or interfere with the Forester or duly authorized representative(s) while they are engaged in the performance of duties imposed by this Chapter.

(Ord. 614 [5-27-1999])

710.12. **License Required.** No person shall conduct as a business, the cutting, trimming, pruning, removal, spraying or other treatment of trees within the City without first having been issued a license therefore. Refer to Chapter 519, Section .01 of the City Code.

(Ord. 614 [5-27-1999])

710.13. **Establishment of Tree Preservation Zone.** A tree preservation zone is hereby established and applies to all property within the City of Wayzata in order to aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce storm water runoff and the costs associated therewith and replenish ground water supplies; aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; provide a buffer and screen against noise pollution; provide shade and the significant environmental benefit of counteracting the so-called "heat-island" effect; provide protection against severe weather; aid in the control of drainage and restoration of denuded soil subsequent to construction or grading; protect and increase property values; conserve and enhance the City's physical and aesthetic environment; provide a haven for birds, animals and flora to thrive; and generally protect and enhance the quality of life and the general welfare of the City.

(Ord. 614 [5-27-1999])

710.14. **Application.** A tree preservation zone shall be applied to and superimposed upon all property contained herein existing or amended by the text and map of the Wayzata Zoning Ordinance. The regulations and requirements imposed by the Tree Preservation Zone shall be in addition to flood plain, shoreland and wetland regulations and requirements, and will all jointly apply to the property. If a conflict is created by the joint application of zones, the more restrictive requirements shall apply.

(Ord. 614 [5-27-1999])

~~710.15. **Restrictions.** Within the Tree Preservation Zone, it shall be unlawful for any person or groups of persons to remove from privately owned land any tree or trees in excess of thirty two (32) inches diameter at breast height (DBH) per acre (43,560 square feet) in any twelve (12) month period without having first obtained a valid tree removal permit from the City. The removal rate for parcels which are less than one (1) acre or more than one (1) acre shall be mathematically proportionate (subject, however, to the maximum density of thirty two (32) inches diameter (DBH) for each acre). For example, up to sixteen (16) inches may be removed from a parcel which is one-half (1/2) acre in size without a permit or up to sixty four (64) inches (but only up to thirty two (32) inches) diameter at breast height (DBH) for each acre) may be removed from a parcel which is two (2) acres in size without a permit. The removal of dead, diseased or hazardous trees from privately owned land shall not require a tree removal permit.~~

~~(Ord. 614 [5-27-1999])~~

710.156. Permit.

~~a. — Any person with due authority desiring a permit to remove a tree shall submit a tree preservation plan in accordance with City Code Subsection 801.36.05, as provided in Section 710.15 shall submit a written application to the Code Enforcement Officer. The application shall include the following information:~~

- ~~(1) — Name and address of applicant.~~
- ~~(2) — Status of the applicant with respect to the land.~~
- ~~(3) — Written consent of the owner of the land, if the applicant is not the owner.~~
- ~~(4) — Name of the person preparing any map, drawing or diagram submitted with the application.~~
- ~~(5) — Location of the property, including a street address or legal description.~~
- ~~(6) — Diagram of the parcel of land, specifically designating the area or areas of proposed tree removal and the existing and proposed use of such area.~~
- ~~(7) — Location of all proposed or existing structures, driveways or other hard surfaces on the site.~~
- ~~(8) — Location of all trees and identification of size (DBH) and species.~~
- ~~(9) — Designation of all diseased or damaged trees.~~
- ~~(10) — Designation of any tree(s) obstructing any roadway, pavement, walkway or utility.~~
- ~~(11) — Any proposed grade changes that might adversely affect or endanger any tree(s) on the site and plans to protect them.~~
- ~~(12) — Designation of trees to be removed and trees to be maintained.~~
- ~~(13) — Purpose of tree removal (construction, driveway, recreation area, patio, building addition etc.).~~
- ~~(14) — All materials to be planted as replacement trees, indicating size, species and method of planting.~~

~~b. — Upon receipt of the application, the Code Enforcement Officer may visit and inspect the site and adjoining lands. If it is determined that the plan set forth in the application outlined in this Section will minimize the loss of Significant Tree(s) and will destroy no more trees than are necessary to achieve a proposed development or purpose,~~

and will comply with the Standards for Preservation of Trees in New Construction or Redevelopment of Property set forth in Section 710.17.a. and Section 710.17.e., the permit application may be approved. If the Code Enforcement Officer determines otherwise, the application shall be denied.

e. — The applicant may appeal the Code Enforcement Officer's decision by providing written notice to the City Council, with the City Council's decision to be made by the first City Council meeting to be held on or after 30 days of the written notice to the Council.

(Ord. ~~xxx 614~~ [5-27-1999])

710.17. — Standards for Preservation of Trees in New Construction or Redevelopment.

a. — Owners, Contractors, Developers, Builders and Applicants shall exert their best good faith efforts, as outlined in the Development Agreement, to avoid damage to or the destruction of Significant Trees when designing, locating or grading for and building improvements. This requirement shall be set forth in any development agreement and construction contracts entered into regarding the project.

b. — The applicant shall submit a Preservation Plan if improvements are to be constructed on property containing Significant Trees. The Preservation Plan shall be submitted along with all other materials required for the permit. The Preservation Plan shall be officially filed when the Code Enforcement Officer has received and examined the application and determined that all required information has been submitted and that the application is complete. Following the determination of "completeness," the Preservation Plan shall be approved or denied by the Code Enforcement Officer within ten (10) business days unless the Preservation Plan is being submitted in conjunction with a land use application, in which case the City of Wayzata shall approve or deny the application within sixty (60) days from the date of its official submission unless notice of an extension is provided by the City or a time waiver is granted by the applicant.

c. — The Code Enforcement Officer's review of the Preservation Plan shall be based upon the following criteria:

(1) — The applicant's legal right to use the property.

(2) — The Preservation Plan minimizes the loss of Significant Trees and will destroy no more trees than are necessary to achieve a proposed development or purpose.

(3) — The ease with which the applicant can alter or revise a proposed improvement to accommodate existing trees.

~~(4) — The density of trees in the area and the effect of tree removal on property values of the neighborhood and on other existing vegetation.~~

~~(5) — Impact upon the urban and natural environment including:~~

~~(a) — Whether tree removal would substantially alter the water table or affect the stabilization of ground and surface water.~~

~~(b) — Whether tree removal would create susceptibility to erosion and siltation.~~

~~(c) — Whether tree removal would cause substantial damage to the existing biological and ecological systems.~~

~~(d) — Whether tree removal would affect noise pollution by increasing source noise levels to such a degree that a public nuisance may be anticipated or a violation of noise control ordinances will occur.~~

~~(e) — Whether tree removal will affect air quality by significantly affecting the natural cleansing of the atmosphere by vegetation.~~

~~(f) — Whether tree removal will affect wildlife habitat by significantly reducing the habitat available for wildlife existence and reproduction or causing the migration of wildlife from adjacent or associated ecosystems.~~

~~(g) — Whether tree removal will increase the possibility of tree disease, wind damage and the loss of windbreak effect.~~

~~(6) — The heightened desirability of preserving tree cover in densely developed or densely populated areas.~~

~~(7) — The need for visual screening in transitional areas or relief from glare, blight, commercial or industrial ugliness or any other visual affront.~~

~~(8) — Whether the removal of the tree(s) is for the purpose of thinning a heavily wooded area where seventy five (75) percent of the trees will still remain.~~

~~d. — If it is determined that the Preservation Plan complies with the criteria as set forth in part c. above, the Preservation Plan may be approved. If the Code Enforcement Officer determines otherwise, the Preservation Plan shall be denied.~~

~~e. — The applicant may appeal the Code Enforcement Officer's decision by providing written notice to the City Council, with the City Council's decision to be made by the first City Council meeting to be held on or after 30 days of the written notice to the Council.~~

~~f. — If a Preservation Plan is approved, a copy of that approved Preservation Plan shall be attached to any issued permit and a copy shall be retained at City offices.~~

~~g. — Prior to commencing construction of the improvements, applicant must implement some form of barricade such as snow fence or plastic fence, which is easily visible to a height of three feet (36") above ground to protect all trees to be preserved under the Preservation Plan. The barricade must incorporate 100% plus ten (10) feet of the tree(s) at the drip line or area to be preserved. No equipment or materials may be stored, parked, driven, moved or deposited within the area to be preserved. The positive protective measure such as fencing shall not be removed until all phases of construction have been completed and removal of protective measure has been approved by the Forester.~~

~~h. — Upon completion of grading and all construction, the Forester or Designee shall inspect the construction site for damage to trees that were to be preserved under the Preservation Plan. A report "Damage Report" shall be submitted to the Applicant as to any trees required to be preserved under the Preservation Plan which have been destroyed or severely damaged because of the grading or construction activity.~~

~~i. — If the damage report identifies destroyed or severely damaged trees which were required to be preserved under the Preservation Plan, the applicant will be required to pay to the City of Wayzata the sum of two hundred (200) dollars per diameter inch or such greater amount as may be determined by the City Council for each such destroyed or damaged tree. Alternately, the City Council may, at its discretion, agree to tree replanting equaling the total caliper inches lost, species and quality, in lieu of a fine, or in conjunction with a reduced fine. Any such agreement shall specify the replacement tree(s) species and diameter. Applicant shall have the right to appeal the damage, report conclusions and resulting fine or replanting requirements in the same manner as set forth in part e. above.~~

~~j. — A certificate of occupancy shall not be issued until a final inspection of the property by the Code Enforcement Officer demonstrates compliance with the Preservation Plan and until such time as all levied fines have been paid or Security, subject to approval of the City Manager, has been posted by the applicant to secure performance. The Code Enforcement Officer may postpone the final inspection of the property if the Code Enforcement Officer determines that seasonal conditions prevent the determination of whether or not there has been compliance with the Preservation Plan. If the applicant appeals pursuant to part i. above, a Certificate of Occupancy may be issued prior to completion of the appeals process, so long as Security is posted.~~

~~k. — A tree will not be deemed to have been damaged under part h. above where the City verifies the applicant implements positive measures such as fencing, or other City~~

~~approved methods, during the entire period of grading and construction and where there is no evidence of physical damage to the trees, including their root structure.~~

~~1. — The applicant's responsibility for the loss of trees on site subject to a Preservation Plan shall cease once the site grading and construction have been completed, the preservation has been verified, or any penalty fees have been paid or approved, replacement trees have been planted, and their growth has been well established for two (2) growing seasons. All monies collected pursuant to this Chapter shall be placed in the plant maintenance fund.~~

~~(Ord. 614 [5-27-1999])~~

710.168. Intentional or Deliberate Damage (Maximum Allowable Tree Removal). In addition to the regulations under City Code Section 801.36, it shall be unlawful for any person(s) to intentionally damage, destroy or adversely alter any living tree, deciduous or coniferous, on private land within the limits of the City of Wayzata any tree or trees in excess of thirty-two (32) inches diameter at breast height (DBH) per acre (43,560 square feet) in any twelve (12) month period without first having obtained a tree removal permit from the City as set forth in Section 710.156 of this Chapter. The removal rate for parcels which are less than one (1) acre or more than one (1) acre shall be mathematically proportionate (subject, however, to the maximum density of thirty-two (32) inches diameter (DBH) for each acre.) This shall pertain to manual, mechanical, chemical, abiotic or biotic (fire, water, insects or inoculation) methods of any kind. Minn. Stat. §561.04 strictly prohibits intentional damage to trees on public property in any form and provides that whoever willfully and without lawful authority injures any tree, timber or shrub on City property is liable for treble the amount of damages which may be assessed therefore. The removal of dead, diseased or hazardous trees, once established and documented as such by the City Forester, from privately-owned land shall not require a tree removal permit under Section 710.15. The City Forester and other City Staff shall not make any claims related to the structural integrity of any tree, and any assessments made related to a tree may not be relied upon by the property owner.

~~(Ord. xxx 627 [2-6-2001])~~

710.179. Violation. Unless expressly provided otherwise, it shall be a misdemeanor for any person to violate any provision of the City Code including this Chapter, any rule or regulation adopted in pursuance of any such provision, or any order lawfully enforcing the City Code or this Chapter. The term "misdemeanor" shall be as defined in Minn. Stat. §609.02, Subd. 3.

It shall also be a misdemeanor for any person to attempt to commit a misdemeanor or to cause, aid, assist, counsel or advise another to commit misdemeanor. Any person who commits a misdemeanor, upon conviction, shall be subject to the penalties therefore established by State Statute. Unless expressly provided otherwise, each act in violation of the City Code, including

this Chapter, shall constitute a separate offense, and each and every day that such a violation occurs or continues shall constitute a separate offense.

(Ord. ~~xxx 627 [2-6-2001]~~)

710.1820. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of the City Code, including this Chapter are severable, and if any phrase, clause, sentence, paragraph, or section of the City Code, including this Chapter, shall be declared unconstitutional, invalid or unenforceable, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of the City Code, including this Chapter.

(Ord. ~~xxx 627 [2-6-2001]~~)

(7-21-81 Code; Chapter repealed and replaced by Ord. 574 [2-21-1995]; Ord. 588 [2-27-1997]; Chapter repealed and replaced by Ord. 614 [5-27-1999]; Ord. xxx [xx-xx-2015])

CITY OF WAYZATA
ZONING ORDINANCE
CHAPTER 801
SECTION 36
TREE PRESERVATION

SECTION 36:

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- 801.36.06: Mandatory Protection**
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801.36.01 PURPOSE:

The Wayzata Ceity Ceouncil finds it is in the best interest of the eCity to protect, preserve, and enhance the natural environment of the community and to encourage a resourceful and prudent approach to the development and alteration of wooded areas. In the interest of achieving these objectives, the eCity has established the comprehensive tree preservation regulations herein to promote the furtherance of the following:

- A. Protection and preservation of the environment and natural beauty of the city;
- B. Assurance of orderly development within wooded areas to minimize tree and habitat loss;
- C. Evaluation of the impacts to trees and wooded areas resulting from development;
- D. Establishment of minimal standards for tree preservation and the mitigation of environmental impacts resulting from tree removal;
- E. Provision of incentives for creative land use and environmentally compatible site design which preserves trees and minimizes tree removal and clear cutting during development; and
- F. Enforcement of tree preservation standards to promote and protect the public health, safety and welfare of the community.

801.36.02: DEFINITIONS:

For purposes of this section, the following definitions shall apply:

a. Canopy Of Tree: The horizontal extension of a tree's branches and foliage in all directions from its trunk and upper layer of green crown.

b. City Forester: shall mean that person appointed as City Forester by the Wayzata City Manager.

c. Coniferous Tree: A woody plant bearing seeds and cones oftentimes, but not always, retaining foliage throughout the year.

d. Construction Area: Any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, or any other change in the natural character of the land occurs as a result of site preparation, grading, building construction or any other construction activity.

e. Critical Root Zone: The minimum area around a tree that must remain undisturbed. The critical root radius is calculated by measuring the tree's DBH.

For each inch of tree DBH, 1.5 feet of root zone radius must be protected. For example, if a tree's DBH is 10 inches, then its critical root zone radius is 15 feet (10 x 1.5 = 15).

f. Deciduous Tree: A woody plant which has a defined crown, and which loses leaves annually.

g. Developer: Any person or entity who undertakes to improve or redevelop a parcel of land, ~~by platting for the purposes of establishing which involves onetwo (12)~~ or more dwelling units, or grading which requires a grading permit.

~~Diameter Of Coniferous Tree: Every two feet (2') in height of a coniferous tree is equivalent to one caliper inch of diameter.~~

~~Diameter Of Deciduous Tree: The length of a straight line measured in caliper inches through the trunk of a tree at four and one half feet (4.5') above the ground.~~

h. Diameter of Tree at Breast Height or "DBH": Tree diameters shall be measured at a point 4½ feet (54 inches) above the ground at which the diameter of a tree shall be measured. Trees that branch near or below 4 ½ feet from the ground will be measured at the narrowest point below 4 ½ feet. Trunks that originate from the ground shall be considered separate trees. The City Forester shall have the final say in the DBH calculation if there is a question of how it is to be measured.

i. Drip Line of a Tree~~Or Root Zone Of A Tree~~: An imaginary vertical line which extends from the outermost branches of a canopy to the ground.

j. Forester: A person appointed as City Forester by the Wayzata City Manager~~person holding at least a Bachelor's Degree in Forestry from an accredited four (4) year college of forestry.~~

k. Hardwood Deciduous Tree: Deciduous trees recognized as hardwoods by the City Forester; ~~includes~~ ironwood, catalpa, oak, maple (hard), walnut, ash, hickory, birch, black cherry, hackberry, locust and basswood.

l. Healthy Tree: Average or better condition and vigor-vitality for area as may be determined by the forester or City Forester.

m. Heritage Tree: A healthy softwood deciduous tree measuring equal to or greater

than ~~twenty-seventy~~ thirty inches (~~30~~27") in ~~diameter~~-DBH , a healthy hardwood deciduous tree measuring equal to or greater than twenty five inches (25") in DBH or a healthy coniferous evergreen tree greater than ~~fifty feet~~25 inches (25") (~~50'~~) in ~~height~~DBH.

n. Landscape Architect: A person licensed by the state of Minnesota as a landscape architect.

o. New Development: A piece of property that is being platted for the purpose of establishing urban residential use with two (2) or more dwelling units or is being improved by grading which requires a grading permit. This definition does not apply to public street/utility projects.

p. Nursery ~~Stock Dealer or Nursery Stock Grower~~man: A person licensed by the state of Minnesota as a nursery stock dealer or a nursery stock grower~~nurseryman~~.

q. Property Owner: The owner of a buildable property who is constructing or expanding a dwelling or a businesscommercial property on that property.

r. Significant Tree: A healthy deciduous hardwood tree measuring a minimum of six (6) ~~caliper~~-inches ~~in diameter~~DBH, a healthy softwood deciduous tree measuring a minimum of twelve (12) ~~caliper~~-inches DBH, or a healthy coniferous tree measuring a minimum of twelve feet (12') in height or twelve (12) inches DBH.

s. Softwood Deciduous Tree: Deciduous trees recognized as hardwoods by the City Forester ; ~~includes~~ cottonwood, poplars/aspen, box elder, willow, silver maple and elm.

t. Tree Preservation Zone: ~~As~~ The tree preservation zone established and described in Section 710.13 of the City Code.

801.36.03: APPLICATION:

The provisions of this Section shall apply to the entire Tree Preservation Zone.

801.36.04: PROCESS:

- A. For Developers: Unless otherwise determined by the ~~city council~~City Council, the following process for preserving trees shall be required from ~~the a developer~~Developer:
1. Prepare a tree preservation plan which shall be incorporated on the grading plan.
 2. Implement the tree preservation plan prior to and during site development.

3. Submit a performance ~~of bond or similar~~ financial guarantee for compliance with the approved tree preservation plan.
4. Comply with the ~~e~~City's tree replacement procedure and requirements set forth in this section.

The tree preservation plan shall be submitted with preliminary plat plans or as part of the application for a grading permit. The tree preservation plan must be certified by a ~~forester~~Forester, ~~Landscape Architect~~, ~~or Nursery Stock Dealer or a Nursery Stock Grower~~ retained by the developer.

The plat and grading plans will not be approved by the ~~C~~city without an approved tree preservation plan. In the case of plats, the tree preservation plan will ~~be~~ approved by the ~~city council~~City Council. In the case of grading permit applications, the tree preservation plan ~~will be~~ must receive the approval of the City Forester. ~~This decision~~Any disapproval of a tree preservation plan may be appealed ~~directly to the board of adjustments~~appeal and appeal adjustments ~~City Council~~.

- B. For ~~Home Residential~~ And ~~Business Commercial Property~~ Owners: The following process for preserving trees shall be required from ~~the a home residential or and business commercial property~~ owner who is not a Developer prior to any proposed tree removal:

1. Identify the ~~significant~~ Significant ~~trees~~ Trees and ~~heritage~~ Heritage ~~trees~~ Trees on the property.
2. Identify the ~~S~~significant ~~T~~trees and/or ~~H~~heritage ~~T~~trees removed due to grading or construction.
3. Identify the protection measures used to protect the preserved trees during grading or construction.
4. Comply with the ~~e~~City's tree replacement procedure and requirements set forth in this section.

The tree preservation plan shall be submitted before any ~~H~~healthy ~~T~~tree is removed. The tree preservation plan may be prepared by the property owner, but must receive the approval of ~~The tree preservation plan will be~~ the City Forster prior to any tree removal on the property. ~~Any disapproval of a tree preservation plan may be appealed to the City Council~~ This decision may be appealed directly to the board of appeal and adjustments.

801.36.05: TREE PRESERVATION PLAN:

~~The developer~~ Developers shall be responsible for implementing ~~the an approved~~ tree preservation plan prior to and during site grading and plan development. ~~The Residential and Commercial~~ property owners shall be responsible for implementing ~~the an approved~~ tree replacement ~~procedure plan~~ prior to any healthy tree removal. The tree preservation plan will be reviewed by the City Forester and any other relevant ~~City~~ staff to assess the best overall ~~tree~~ design for the project ~~involved~~, taking into account ~~heritage the preservation, renewal and health of Heritage~~ and ~~significant Significant trees-Trees~~, and ways to enhance the efforts of the ~~developer-Developer~~ to mitigate ~~corresponding~~ damage ~~to the trees on the property and the natural environment~~. The ~~developer-Developer~~ is encouraged to meet with ~~City~~ staff prior to submission of ~~the a~~ preliminary plat application or prior to application for the grading permit, whichever is sooner, to determine the placement of buildings, parking, driveways, streets, storage and other physical features which result in the fewest ~~Ssignificant Ttrees~~ being destroyed or damaged. The tree preservation plan shall include the following items:

- A. The name(s) and address(es) of property owners and/or ~~developers~~ Developers.
- B. Delineation of the buildings, structures, or impervious surfaces situated thereon or contemplated to be built thereon.
- C. Delineation of all areas to be graded and limits of land disturbance.
- D. Size, species, ~~and~~ location ~~and condition~~ of all ~~heritage-Heritage~~ and ~~significant Significant~~ trees located within the area to be platted or the parcel of record ~~as well as on adjacent tracts where their critical root zones are within the proposed construction limits~~.
- E. Identification of all ~~Hheritage~~ and ~~Ssignificant Ttrees~~ on all individual lots. (The ~~Ddeveloper~~ shall be required to submit a list of all lot and block numbers identifying those lots.)
- F. Measures to protect ~~Hheritage~~ and ~~Ssignificant Ttrees~~.
- G. Identification of all ~~Hheritage~~ and ~~Ssignificant Ttrees~~ proposed to be removed within the construction area, including the contouring of all areas to be clear cut.
- H. Size, species, and location of all replacement trees to be planted on the property in accordance with the tree replacement schedule.
- I. Signature of the person preparing the plan and statement which includes acknowledgment of the fact the trees to be used as replacements are appropriate species with respect to survival of the replacement trees.

801.36.06: MANDATORY PROTECTION:

Measures to protect ~~Hheritage~~ and ~~Ssignificant tTrees~~ shall include:

- A. Installation of snow fencing, silt fence, or polyethylene laminate safety netting placed at the ~~drip line~~critical root zone of ~~s~~Significant ~~T~~trees to be preserved on or adjacent to the tract property being developed.
- B. Identification of any oak trees requiring pruning between April 1~~5~~ and July 1~~5~~; any oak trees so pruned shall be required to have any cut areas sealed with an appropriate, non-petroleum based tree wound sealant, such as (ex. sShellac).

801.36.07: DISCRETIONARY PROTECTION:

Measures to preserve or protect significant trees, which may be required by the ~~e~~City, include, but are not limited to:

- A. Installation of retaining walls or tree wells to preserve trees by eliminating the filling or cutting of soil within critical root zones of s~~Significant~~ ~~T~~Trees on or adjacent to the lot being developed~~drip zones~~.
- B. Placement of utilities in common trenches outside of the ~~drip~~ Drip line ~~Line~~ of ~~significant~~ Significant ~~trees~~ Trees, or use of tunneled installation.
- C. Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.
- D. Use of tree root aeration, fertilization, and/or irrigation systems when appropriate.
- E. Transplanting of ~~significant~~ Significant ~~trees~~ Trees into a protected area for later moving into permanent sites within the construction area.
- F. Safety pruning for people working within the construction limits and as well as for the trees themselves involved.

801.36.08: TREE REMOVAL:

- A. Heritage Trees: Heritage ~~trees~~ Trees are valued and special~~unique~~ trees ~~to for the City of~~ Wayzata due to their size and age. All possible measures ~~will~~ shall be taken to preserve these trees. Heritage ~~trees~~ Tree removal may occur only when there is not a practical alternative, such as infrastructure of a regional nature. There ~~is~~ shall be a zero percent (0%) removal threshold on ~~heritage~~ Heritage ~~T~~trees, meaning every ~~each~~ DBH inch of ~~H~~heritage ~~T~~tree removed shall~~will~~ require full replacement in accordance with the standards within subsection 801.36.09 in addition to any other requirements hereunder.
- B. Significant Tree Removal ~~For By Developments~~ Developers: Although ~~the applicant must retain~~ the City encourages preservation of the maximum amount of ~~woodland trees~~ possible, the ~~city~~ City recognizes that a certain amount of ~~significant~~ Significant ~~trees~~ Trees and tree cover removal is ~~an inevitable consequence of the urban~~ sometimes

required in connection with development process. Therefore Accordingly, twenty-five percent (25%) of the existing ~~caliper DBH~~ inches of trees can be removed during development by a Developer pursuant to a tree preservation plan without obligation of replacement. Any removal beyond twenty-five percent (25%) will require replacement in accordance with the standards ~~within of~~ subsection 801.36.09.

- C. Significant Tree Removal ~~For By Residential Home~~ And ~~Business~~ Commercial Property Owners: ~~The majority of tree removal occurs during the grading and installation of infrastructure during subdivision.~~ The City recognizes that additional tree removal may occur after ~~subdivision to the~~ construct new houses or ~~business commercial property~~, or the expansion of existing homes or ~~business commercial property~~, but to a lesser degree than the original ~~subdivision development~~. Therefore, ten percent (10%) of the existing ~~caliper DBH~~ inches of trees can be removed during home or ~~business commercial property~~ construction or redevelopment without obligation of replacement. Any removal beyond ten percent (10%) will require replacement in accordance with the standards within subsection 801.36.09.
- D. Trees Exempt From Replacement Requirements: The following types of trees ~~do shall~~ not ~~need to~~ be included as part of the tally of tree removals for purposes of calculating replacement in accordance with the standards within subsection 801.36.09:
1. Dead, diseased, or dying trees as determined by the City Forester; or
 2. Trees that are transplanted from the site to another appropriate area within the city City as approved by the City Forester; or
 3. Trees that were planted as part of a commercial business such as a tree farm or nursery; or
 4. Trees that are structurally unstable and pose a risk to people or permanent structures, as deemed by a certified arborist with a Tree Risk Assessment Qualification and the City Forester; or
 5. Any tree needed to be removed to construct or maintain ~~infrastructure of a regional nature, including but not limited to one of the following~~:
 - a. Collector or arterial roads as defined by the City Transportation Plan.
 - b. Regional recreational trails.
 - c. Stormwater infrastructure serving a regional drainage area.
 - d. Installation or maintenance of trunk utility infrastructure as described in the Comprehensive Sewer or Water Plans.

801.36.09: TREE REPLACEMENT FORMULA:

Replacement of removed or disturbed trees in excess of the percentage allowed by this ~~subsection~~section shall be according to the following ~~guidelines~~ratios:

- A. For ~~development which any removal that~~ exceeds the percentage of allowable removal of significant trees as set in subsection 801.36.08, all ~~significant~~ Significant trees ~~Trees~~ shall be replaced at the ratio of one ~~half~~ (0.51) caliper inch per one (1) caliper inch removed.
- B. ~~For each heritage tree removed by the developer, a~~ All heritage ~~Heritage trees~~ Trees shall be replaced at the ratio of ~~two one~~ (1.2) caliper inch per one (1) caliper inch removed.

801.36.10: SIZE, TYPES AND DIVERSIFICATION OF REPLACEMENT TREES:

Unless an approved tree preservation plan sets forth a different requirement, all rReplacement trees required under subsection 801.36.09 shall be of a similar species to those that are removed, but also shall be a minimum of twenty five percent (25%) conifers and twenty five percent (25%) deciduous hardwoods. Required ~~heritage~~ Heritage ~~t~~Tree replacement must be of the same species as the ~~H~~heritage Ttree removed. Replacement trees must be no less than the following sizes:

- A. Deciduous ~~t~~Trees shall be no less than ~~three two point five~~ (2.5"3) caliper inches; and
- B. Coniferous ~~t~~Trees shall be no less than six feet (6') high.

801.36.11: ACCEPTABLE TREE REPLACEMENT SPECIES:

The following list of trees are acceptable for tree replacement species. The ~~city~~ City Forester may, ~~at its discretion~~, approve additional species if circumstances such as soil conditions, hydrology, topography, or recent tree ~~diseases~~ pathogens warrant.

Arborvitae

Black cherry

Butternut

Cedar

Elm (disease resistant)

Fir

Hackberry

Hickory

Hemlock

Kentucky Coffee

Linden/Basswood

Maple (except Silver Maples)

Oak

Pine

Spruce (except Colorado Blue)

Tamarack

Walnut

801.36.12: OTHER REPLACEMENT TREE REQUIREMENTS:

Choice of replacement trees species and location of the trees should also ~~be contingent on take~~ into account the following information:

- A. Soil Composition: Comparisons should be made between soil conditions and the ecology of the proposed species to make sure they are compatible.
- B. Spatial Requirements: The potential height and crown spread of the proposed replacement trees should be known. ~~Usually~~ Generally, half of the adult tree crown diameter is the amount of distance a tree should be planted from any aboveground objects.
- C. ~~Diseases And Insect~~ Pathogen Problems: Appropriate replacement choices shall also consider insect and disease problems that may be common with particular species in the part of the state in which the ~~city~~ City of ~~Rosemount~~ Wayzata is located.

801.36.13: FEE-IN-LIEU OF TREE REPLACEMENT OR REPLACEMENT TREES PLANTED IN PUBLIC AREAS:

The ~~city~~ City recognizes that there may be instances where the total amount of tree replacement required under this section cannot occur on site. In those instances, the ~~C~~ eity may, at its option, accept a fee-in-lieu of tree replacement or allow the planting of replacement trees in public areas. Tree replacement is encouraged to happen on site as much as possible and fee in lieu-of-tree replacement should be used only when replacement cannot occur on site. The amount of fee-in-lieu of tree replacement will be determined annually by the ~~city council~~ City Council through the ~~city~~ City fee schedule.

801.36.14: FINANCIAL GUARANTEE:

The ~~e~~ City shall, at its option, withhold a certificate of occupancy ~~certification~~ or require cash, a letter of credit or a bond satisfactory to the ~~C~~ eity in the amount of one hundred ten percent

(110%) of the value of the landscaping and tree replacement, securing the full performance of tree preservation plan and the tree replacement schedule. The amount of ~~the such~~ security shall be ~~determined-calculated~~ by the fee-in-lieu of tree replacement schedules. The financial guarantee-security shall ~~be held to be sufficient to cover the costs of guarantee a three (3) year survival of~~ the replacement trees planted, including any needed replacement of the trees over a three (3) year period. The financial guarantee-security shall be released based on the following schedule:

- A. Upon installation of a healthy tree:
50% of the financial guarantee for that tree shall be released.
- B. First year inspection determining the installed tree is still healthy:
15% of the financial guarantee for that tree shall be released.
- C. Second year inspection determining the installed tree is still healthy:
15% of the financial guarantee for that tree shall be released.
- D. Third year inspection determining the installed tree is still healthy:
20% of the financial guarantee for that tree shall be released.

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BEST & FLANAGAN

Memorandum

DATE: October 19, 2015
TO: Wayzata Planning Commission
FROM: Wayzata City Attorney
REGARDING: Application of Proposed Tree Ordinance to Other Governmental Units

QUESTION

Would the City's proposed Tree Preservation Ordinance apply to land owned or used by other governmental units, like Met Council, within the City?

SHORT ANSWER

Yes. Minnesota cities are statutorily authorized to regulate the use of private and public property within their city, including specifically, trees, and those regulations apply to all land within the city, including land owned or used other governmental bodies, unless such use or user has specific authority that overrides the local regulation.

ANALYSIS

Cities are granted comprehensive authority to regulate land use within their city by the state law known as the Municipal Planning Act. Under the Act, cities have three basic tools for regulation: (1) Comprehensive Plan, (2) Zoning Ordinance; and (3) Subdivision Ordinance. This delegation of authority to cities is broad. Cities have the power to regulate "on the earth's surface, in the air space above the surface, and in subsurface areas", including regulation of environmental and natural resources usage, such as forestry and agriculture, and soil and water conservation. Other parts of state law give specific authority to statutory cities to protect trees, which home rule cities, like Wayzata, can exercise where their charter is silent on the matter.

Cities are free to exercise this statutory authority absent any state statute that limits, pre-empts or divests such authority. In addition, certain federal laws, in the area of religious use and telecommunications, e.g., can also limit the scope of local land use regulations.

In our research, which included conferring with the League of Minnesota Cities, we did not identify any state law that expressly pre-empted a city from regulating treatment of trees within its territory, or expressly pre-empted a city from imposing its regulations by ordinance upon all

land uses within its jurisdiction, including another governmental entity operating within city limits. Thus, our conclusion is that Wayzata's proposed Tree Preservation Ordinance would be applicable to all land and land uses within the City, including land owned or used by other governmental units like Met Council.

It's worth noting that all land use regulation should conform to and implement the goals and guidance of the City's comprehensive plan, which is reviewed by Met Council. This system for review of comprehensive plans of metropolitan governments was developed to create a "clearing house" within the metropolitan area, and minimize the occurrence of intergovernmental conflicts among local governmental plans. If an intergovernmental conflict does arise, a "balancing-of-public-interests" test controls resolution of the conflict. In one such Minnesota Supreme Court case applying this test, the Court gave greater weight to the immediate need to address environmental issues over other governmental land use.

CONCLUSION

Minnesota cities are statutorily authorized to regulate the use of private and public property, including trees, and those regulations apply to all land and users of the land, including other governmental bodies, unless such use or user has specific authority that overrides the local regulation. We have identified no such authority that would allow Met Council or other governmental unit to avoid the regulations of a new Wayzata Tree Preservation Ordinance. However, in the event there was a conflict between an exercise of Met Council's authority, and the new ordinance, a balancing-of-public-interests test would be applied to determine whether the City ordinance may be imposed upon Met Council.

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CITY OF WAYZATA



PLANNING DEPARTMENT

MEMORANDUM

To: Planning Commission
From: Eric Zweber, AICP, Interim City Planner
Date: October 19, 2015
Re: 240 Manitoba Ave S Rear Yard and Lot Coverage Variances to Construct a Second Garage Stall

During the October 5th meeting, the Planning Commission unanimously recommended that staff prepare a Report and Recommendation Approving the Rear Yard Setback and Lot Coverage Variances to allow the construction of a second garage stall at 240 Manitoba Ave S. That Report and Recommendation is provided in Attachment A. For reference, the plans included in the recommendation are provided in Attachment B and the October 5th Planning Commission Report for 240 Manitoba Ave S is provided in Attachment C.

Planning Commission Recommendation: Based on the findings in section 3 of the Planning Commission Report and Recommendation, the Planning Commission recommends approval of the Setback and Lot Coverage Variances as set forth in the Application (Attachment A), subject to all of the following conditions:

- A. The Applicant must secure all necessary building permits for construction, and follow all laws and regulations applicable to the Project.
- B. All expenses of the City of Wayzata, including consultant, expert, legal, and planning incurred must be fully reimbursed by the Applicant.

Attachments:

Attachment A: Planning Commission Report and Recommendation
Attachment B: Proposed Section 801.36

- o Attachment B-1: Existing Conditions Site Plan
- o Attachment B-2: Proposed Site Plan
- o Attachment B-3: Garage Remodel Plans

Attachment C: October 4 Planning Commission Report



WAYZATA PLANNING COMMISSION

October 19, 2015

REPORT AND RECOMMENDATION ON APPLICATION FOR A REAR YARD SETBACK VARIANCE AND A LOT COVERAGE VARIANCE AT 240 MANITOBA AVENUE SOUTH

SUMMARY OF RECOMMENDATION

- Approval* of Rear Yard Setback and Lot Coverage Variances

** subject to certain conditions noted in Section 4 of this Report*

REPORT AND RECOMMENDATION

Section 1. BACKGROUND

- 1.1 Project. David Frey (the "Owner" or "Applicant") has submitted a development application (the "Application") requesting approval to construct an approximately ten (10) feet wide by twenty four (24) feet long, two hundred twenty eight square foot (228 SF) expansion to an existing attached garage (the "Project") at 240 Manitoba Ave S (the "Property"). The Application requests approval of a variance to encroach 9.8 feet into the twenty (20) foot rear yard setback and a variance to increase the lot coverage by 1.4% percent above the 30% lot coverage to allow for the construction of a second stall onto the existing single stall garage.
- 1.2 Application Request. As part of the Application, the Applicant is requesting approval of the following items:
- A. A variance from the required twenty (20) foot Rear Yard Setback for a residential structure within the C-1 District (Sections 801.19.5, 801.75.2.J. and 801.56.6.B.1.c.) to allow encroachment of 9.8 ft into the setback (the "Setback Variance")
 - B. A variance from the required thirty (30%) percent Lot Coverage for a residential structure within the C-1 District (Sections 801.19.5, 801.75.2.J. and 801.56.7.A.) to allow the maximum lot coverage of 31.4% (the "Lot Coverage Variance").

- 1.3 Property. The property identification number and owner of the affected property (the “Property”) are:

240 Manitoba Ave S	06-117-22-24-0029	David Frey
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- 1.4 Land Use. Uses to the north and the east are multiple story mixed use buildings, uses to the south are commercial and uses to the west are single family detached residential. The Property and adjacent properties to the north and east are zoned C-1, the properties to the south are zoned C-4 and the properties to the west are zoned R-3A.
- 1.5 Notice and Public Hearing. Notice of a public hearing on the Application was published in the *Lakeshore Weekly* on September 22, 2015 and notices were mail to all properties within 350 feet of the Property on September 21, 2015. The required public hearing was held at the October 5, 2015 Planning Commission meeting.
- 1.6 Planning Commission Action. The Planning Commission reviewed the Application and held a Public Hearing on October 5, 2015. No individuals spoke at the Public Hearing. The Planning Commission voted seven (7) in favor and zero (0) opposed to direct staff to prepare a draft *Planning Commission Report and Recommendation* for approval of the Application.

Section 2. STANDARDS

- 2.1 Rear Yard Setback. The rear yard setback for a residential structure within the C-1 District is twenty (20) feet. Sections 801.19.5, 801.75.2.J. and 801.56.6.B.1.c.
- 2.2 Lot Coverage. The lot coverage maximum for a residential structure within the C-1 District is thirty (30%) percent. Sections 801.19.5, 801.75.2.J. and 801.56.7.A.
- 2.2 Zoning Ordinance Variance Standards. Section 801.05.1.C provides the criteria for reviewing variances from the standards of the Zoning Ordinance. The variance review criteria are as follows:
- A. Variances shall only be permitted when they are:
 - (i) in harmony with the general purposes and intent of the Zoning Ordinance; and
 - (ii) consistent with the Comprehensive Plan.
 - B. Variances may be granted when the Applicant for the variance establishes that there are practical difficulties in complying with this Ordinance.

- C. "Practical difficulties," as used in connection with the granting of a variance, means that:
 - (i) the property owner's proposal for the property is reasonable but not permitted by the Zoning Ordinance;
 - (ii) the plight of the landowner is due to circumstances unique to the property, and not created by the landowner; and
 - (iii) the variance, if granted, will not alter the essential character of the locality.
- D. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- E. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes, section 216C.06, subdivision 14, when in harmony with this Ordinance.
- F. The City Council shall not permit as a variance any use that is not allowed under this Ordinance for property in the zoning district where the affected person's land is located, except the City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling.
- G. The City Council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
- H. An application for a variance shall set forth reasons that the variance is justified under the criteria of this section in order to make reasonable use of the land, structure or building.

Section 3. FINDINGS

Based on the Application materials, staff reports, public comment presented at the hearing, and Wayzata's Zoning Ordinance, the Planning Commission of the City of Wayzata makes the following findings of fact with respect to the Setback Variance and the Lot Coverage Variance:

3.1 Setback and Lot Coverage Variances.

- A. The Setback and Lot Coverage Variances requested in the Application do not change the current single family residential use. The property is zoned C-1 and the variances would not be needed in this zoning district if the use on the Property were non-residential. The Setback and Lot Coverage Variances requested are in harmony with the general purposes and intent of the Ordinance and are consistent with the Comprehensive Plan.

- B. The Property was platted before 1950. The lot size is non-conforming (54.3% of the requirement) and the lot depth is non-conforming (81.5% of the requirement). The property to the north and property to the east combined multiple non-conforming lots to create new conforming lots for development. The Manitoba Ave right-of-way is directly to the west and the Indian Mound East right-of-way is located directly to the south. The Applicant's Setback and Lot Coverage Variance requests are to address the practical difficulty that this lot is land locked and that there is not adjacent property to combine with to create a conforming lot.
- C. The Setback and Lot Coverage Variances requested are reasonable, due to circumstances driven by the existing lot layout, the non-conforming lot size of 54.3% of the minimum lot size requirement and the non-conforming lot depth of 81.5% of the minimum lot depth. If granted, the Setback and Lot Coverage Variances would not alter the essential character of the locality in that the height of the building would not change, no trees would be lost, the existing driveway access will remain the same, the total of all impervious surfaces would remain unaltered, and many residences in the neighborhood have two car garages.
- D. The practical difficulties necessitating the Setback and Lot Coverage Variances are not solely economic in nature. The existing lot size and dimensions on the Property are significant factors in the practical difficulty of meeting the Ordinance requirements.
- E. The proposed uses for the Property, including the attached garage, are permitted accessory uses within the C-1 District.
- F. The conditions for granting approval of the Setback and Lot Coverage Variances are listed below in Section 4 of this Resolution.
- G. The Applicant has provided the reasons that the Setback and Lot Coverage Variances are justified under the criteria of the Ordinance in order to make reasonable use of the land, structures and buildings on the Property.

Section 4. RECOMMENDATION

4.1 Planning Commission Recommendation. Based on the findings in section 3 of this Report, the Planning Commission recommends approval of the Setback and Lot Coverage Variances as set forth in the Application (Attachment A), subject to all of the following conditions:

- A. The Applicant must secure all necessary building permits for construction, and follow all laws and regulations applicable to the Project.

- B. All expenses of the City of Wayzata, including consultant, expert, legal, and planning incurred must be fully reimbursed by the Applicant.

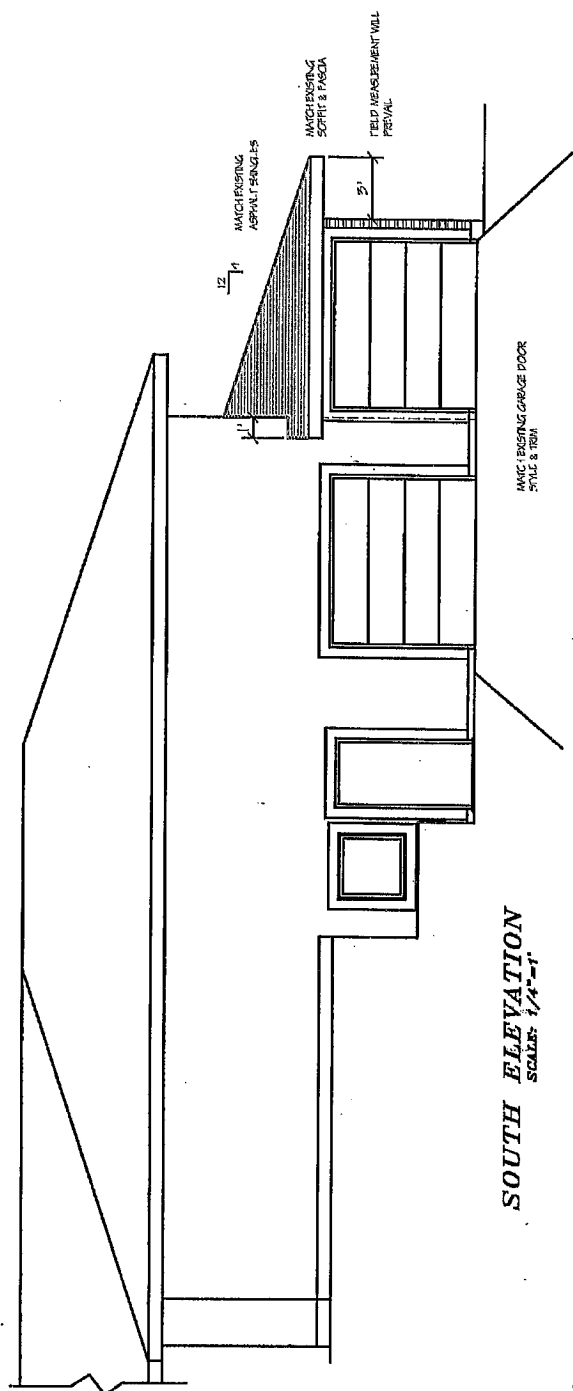
Adopted by the Wayzata Planning Commission this 19th day of October 2015.

Chair, Planning Commission

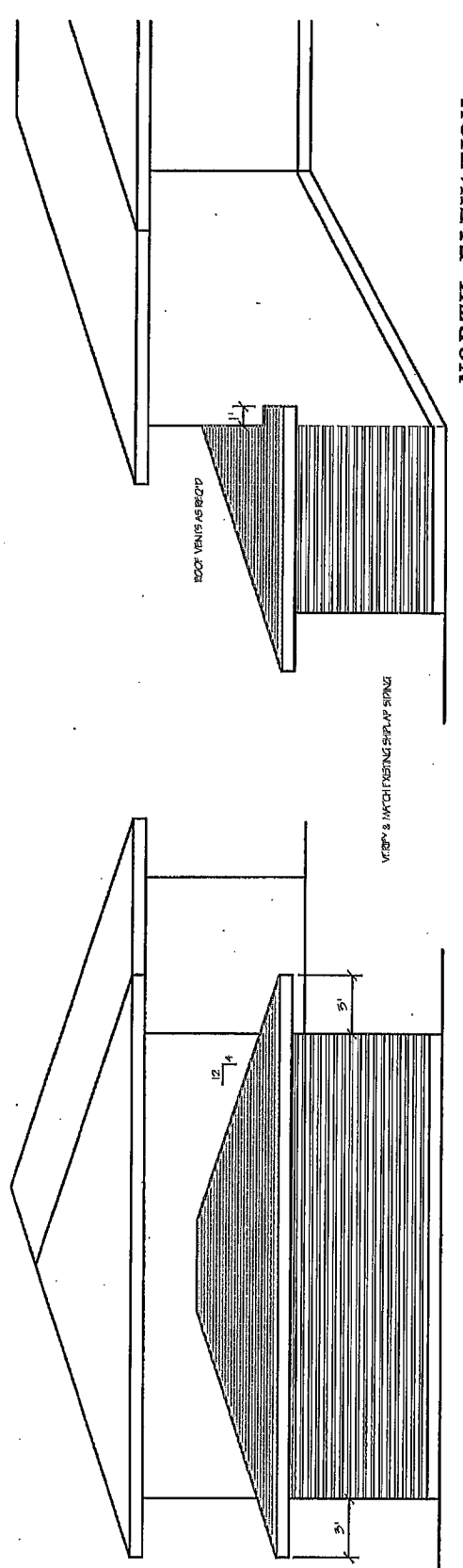
Attachment A

Setback and Lot Coverage Variances as set forth in the Application

PATRICK HANITY & ASSOC. INC.
KCP HOME DESIGN, INC.
 784 P.O. BOX 784
 EXCELSIOR, MN 55831
 952-443-0191
 952-474-4186
 7618 VYING STREET
 CEDEX, MN 55818
 952-474-7888
 email: kcpdesign@q.rr.com
 952-474-4186

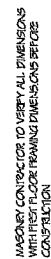
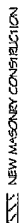


SOUTH ELEVATION
SCALE: 1/4"=1'



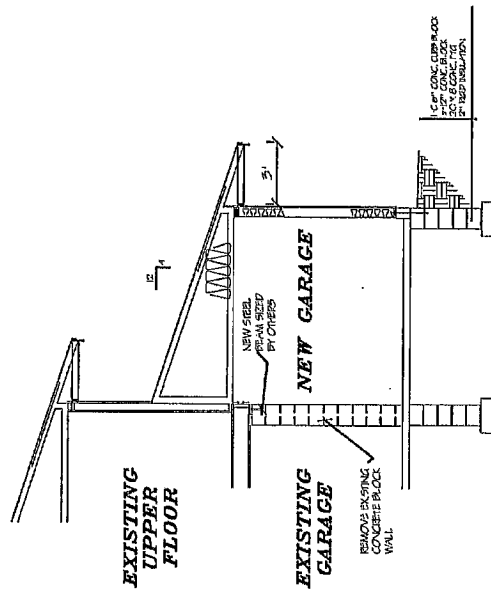
NORTH ELEVATION
SCALE: 1/4"=1'

EAST ELEVATION
SCALE: 1/4"=1'



SCALE: 1/4"=1'-0"
SZ NEW SQ. FT.

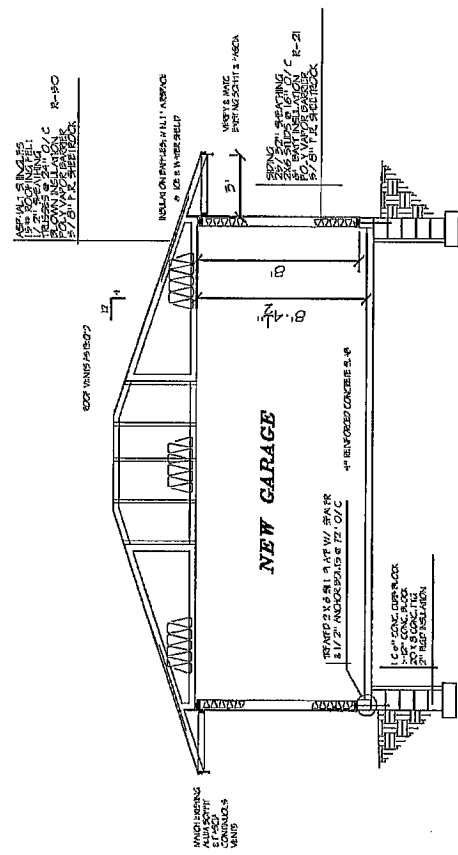
REVISED: 6-20-15
SHEET 2 OF 3
PLAN NO. C1847



BUILDING SECTION B-3
SCALE: 1/4"=1'

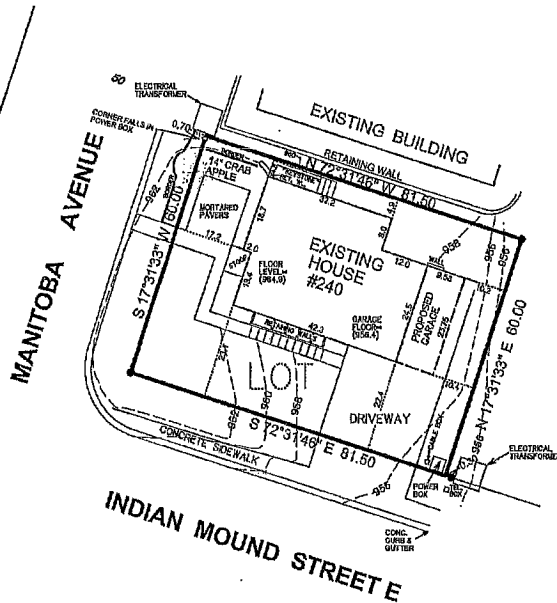
FIELD NO. 916161 WALL REPAIR

10/10/10
10/10/10
10/10/10

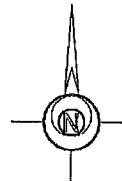


BUILDING SECTION A-3
SCALE: 1/4"=1'

CERTIFICATE OF SURVEY FOR
DAVID FREY
 IN LOT 5, BLOCK 4, STEPHENS REARRANGEMENT
 OF BLOCKS 3 AND 4, TOWNSHIP OF WAYZATA
 HENNEPIN COUNTY, MINNESOTA



5



LEGAL DESCRIPTION OF PREMISES:

The Southwesterly 60 feet of the Northwesterly 81.5 feet of Lot 5, Block 4, "Stephen's Rearrangement of Blocks 3 and 4, Township of Wayzata."

• : denotes iron marker found

(908.3): denotes existing spot elevation, mean sea level datum

---917---: denotes existing contour line, mean sea level datum

Bearings shown are based upon an assumed datum.

This survey shows the boundaries and topography of the above described property, the location of an existing house and driveway, all other visible "hardcover", and the proposed location of a proposed garage thereon. It does not purport to show any other improvements or encroachments.

EXISTING HARDCOVER CALCULATIONS :

Lot area = 4891 sf

HOUSE = 1308 sf

STOOP = 32 sf

DRIVEWAY = 876 sf

WALK & STEPS = 379 sf

Total hardcover = 2595 Sq. ft.

$2595 / 4891 \times 100 = 53.06\%$

PROPOSED HARDCOVER :

Proposed garage = +228 sf

Removed driveway = -228 sf

No change in hardcover.

DATE 	DESCRIPTION 	GRONBERG AND ASSOCIATES, INC. CONSULTING ENGINEERS, LAND SURVEYORS, & SITE PLANNERS 445 NORTH WILLOW DRIVE LONG LAKE, MN 55356 952-473-4141	I hereby certify that this plan, specification, or report was prepared by me, or under my direct supervision, and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota. Mark S. Gronberg Minnesota Licensed Number 12795	SCALE 1"=20' DATE 7-22-15 JOB NO. 15-280
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Planning Report
October 5, 2015
Wayzata Planning Commission Meeting

File Case No: PR 2015-14
Owner: David Frey
Address of request: 240 Manitoba Ave S
PID number: 06-117-22-24-0029
Prepared By: Eric Zweber, Interim City Planner
Project Summary: The Application is for a Variance from the Twenty (20) Foot Rear Yard Setback requirement and the 30% Lot Coverage requirement for a residential structure in the C-1 Office and Limited Commercial District. (City Code § 801.19.5)

Section 1: Background.

David Frey (the “Owner” or “Applicant”) has submitted a development application (the “Application”) requesting approval to construct an approximately ten (10) feet wide by twenty four (24) feet long, two hundred twenty eight square foot (228 SF) second garage stall onto an existing attached garage (the “Project”) at 240 Manitoba Ave S (the “Property”). The Application requests approval to encroach into the twenty (20) foot rear yard setback to a distance of 10.2 feet to allow for the location of the second garage stall in place of an existing driveway (the “Project”). Additionally, a lot coverage variance would be required to allow the lot coverage to exceed the 30% lot coverage requirement by 1.4%. The proposed site plan and building plans for the garage expansion are included as Attachment A to this Report.

The zoning request included in the Application is:

- A Variance from the Twenty (20) foot Rear Yard Setback for a residential structure within the C-1 District (Sections 801.19.5 and 801.56.6 B. 1. c.) to a distance of 10.2 feet (the “Setback Variance”).
- A Variance from the 30% Lot Coverage for a residential structure in a C-1 District (Sections 801.19.5 and 801.56.7 A.) to increase the lot coverage to 31.4% (the “Lot Coverage Request”).

1.1 Approval Requests.

The Project includes two (2) approval requests associated with the Application:

A. *Variance for Rear Yard Setback*

The existing single stall, tuck-under garage is located on the southeast side of the house. The Applicant proposes to construct a second garage 9.58 feet wide by 24.13 feet deep, 230 SF garage addition on the southeast side of the garage to a distance of 10.2 ft from the rear property line. The request required approval of a Rear Yard Setback Variance from the twenty (20) feet side yard setback requirement for a residential structure within the C-1 Office and Limited Commercial District.

B. *Variance for Lot Coverage*

The existing lot coverage on the lot is 26.7% (1,308 SF building on a 4,891 SF lot), which under the 30% lot coverage allowed. The construction of the second garage stall addition would add 228 SF and raise the lot coverage to 31.4% (1,536 SF of building on a 4,891 SF lot), requiring a variance to 30% lot coverage standard.

1.2 Applicant's Narrative.

The Applicant provided the following narrative describing their request:

I am requesting a Conditional Use Permit (since changed to a Variance) to reduce the side-yard setback requirements in order to add a second garage stall to my house. The house currently has a 1 stall garage and my wife and I would both like to be able to park ours cars in a garage.

The lot is zoned C-1, which allows for 10 foot setbacks around the property, but because a single-family residence is on the property, the R3 zoning applies. With the R3 zoning and a corner lot, the setback on the east side of the property where we would like to add a garage is 20 feet. The building is currently set back 19.7 feet from the lot line so decreasing the setback to 10 feet would put the east of 240 Manitoba Avenue in line with the east side of 230 Manitoba Avenue, just to the north and allow us to add 9.7 feet onto the existing garage and add another garage stall.

The garage addition is currently a paved, outdoor parking area so adding the garage would (not) impact the hardcover area currently on the lot.

Staff Note: The Conditional Use Permit Application was submitted on August 31. Staff provided Mr. Frey an Incomplete Letter on September 9 stating that this request is not a Conditional Use and that this request would need to be reviewed under a Variance Application. On September 9, the applicant re-submitted his request with a Variance Application.

1.3 Relevant Property Information.

Zoning:	C-1 Office and Limited Commercial District
Comp Plan:	Mixed Use Residential
Total lot size:	4,891 square feet (SF) or 0.11 acres

§801.19.5: Residential Standards in Non-Residential Districts:
Existing single family or two family residential uses within R-4, R-5, INS, C-1, C-2, C-3 and C-4 Districts also shall conform with R-3 District standards.

Map 1: Existing Property Aerial



1.4 Legal Description.

A copy of the legal description for the subject properties are on file and available for viewing at City Hall. The following properties are included in the project area of the Application:

240 Manitoba Ave S	06-117-22-24-0029	David Frey
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1.5 Public Noticing Requirements.

Zoning Ordinance Section 801.05 requires the Planning Commission to hold a public hearing on the Application. The Notice of Public Hearing was published in the Lakeshore Weekly on September 22, 2015. A copy of the Notice of Public Hearing was also mailed to all property owners located within 350 feet of the subject property on September 21, 2015.

Section 2. Summary of Issues.

2.1 Zoning Analysis.

Adjacent property uses are:

Adjacent Property	Zoning	Uses
Northeast	C-1	Mixed Use
Southeast	C-1	Mixed Use
Southwest	C-4	Commercial
Northwest	R-3A	Single Family Residences

A comparison of the R-3 Standards and the proposed Project is as follows:

R-3 District	Code Standard	Proposed
Minimum Lot Area	9,000 square feet (SF)	4,891 SF
Minimum Lot Width	60 ft	60 ft
Minimum Lot Depth	100 ft	81.5 ft
Front Yard Setback (min.)	20 ft	17.2 ft
Side Yard Setback (Southwest)	20 ft	22.4 ft
Side Yard Setback (Northeast)	10 ft	4.9 ft
Rear Yard Setback (min.)	20 ft	19.68 ft (existing) 10.2 ft (proposed)
Lot Coverage	30%	26.7% (1,308 SF) existing 31.4 % (1,536 SF) proposed
Impervious Surface	35%	53.1% (3,847 SF) existing 53.1% (3,947 SF) proposed

Section 3. Applicable Review Criteria:

3.1 Zoning Ordinance Variance Standards. Section 801.05.1.C provides the criteria for reviewing variances from the Zoning Ordinance. The Variance requested in the Application is a Setback Variance. The variance review criteria are as follows (with Staff's comments included in *italics*):

- A. Variances shall only be permitted when they are:
- (i) in harmony with the general purposes and intent of this Ordinance; and
 - (ii) consistent with the Comprehensive Plan.

The Property is guided for Low Density Single Family residential use. The Application proposes to construct an expansion to an existing attached garage on the Property, encroach 9.6 ft into the required twenty (20) foot side yard setback and increase the lot coverage 1.4% beyond the 30% requirement. The Planning Commission and City Council should make a finding of fact on whether or not the variance requests are in harmony with the general purpose and intent of the ordinance and consistent with the Comprehensive Plan.

- B. Variances may be granted when the Applicant for the variance establishes that there are practical difficulties in complying with this Ordinance.

The Planning Commission and City Council should make a finding of fact on whether or not the Applicant has established that there are practical difficulties in complying with the Ordinance.

- C. "Practical difficulties," as used in connection with the granting of a variance, means that:
- (i) the property owner's proposal for the property is reasonable but not permitted by this Ordinance;
 - (ii) the plight of the landowner is due to circumstances unique to the property, and not created by the landowner; and
 - (iii) the variance, if granted, will not alter the essential character of the locality.

The Property is currently guided for single family use, and the Applicant desires to continue that use and construct an expansion to an existing attached garage on the Property. The Planning Commission and City Council should make a finding of fact on whether or not the Project meets the practical difficulties and reasonableness standard.

- D. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

The Planning Commission and City Council should make a finding of fact on whether or not economic considerations are the sole reason for the practical difficulties.

- E. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes, section 216C.06, subdivision 14, when in harmony with this Ordinance.

Not applicable in this case, as the Applicant is not proposing earth sheltered construction.

- F. The City Council shall not permit as a variance any use that is not allowed under this Ordinance for property in the zoning district where the affected person's land is located, except the City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling.

The proposed addition to the existing garage of the existing single family detached house is a permitted use in the C-1 District provided that the development of the site meets the R-3 district standards.

- G. The City Council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

The Planning Commission and City Council should determine if there are any applicable conditions that apply, if the Project is recommended for approval.

- H. An application for a variance shall set forth reasons that the variance is justified under the criteria of this section in order to make reasonable use of the land, structure or building.

The Applicant has provided a narrative, included in Section 1.2 of this Report, to describe their reasons for requesting the Variance.

Section 4. Action Steps.

After considering the items outlined in this Report, the Planning Commission should pursue the following as an action step:

1. Direct staff to prepare a *Planning Commission Report and Recommendation*, with appropriate findings, reflecting a recommendation on the Application for review and adoption at the next Planning Commission meeting.

240 Manitoba Ave S
p. 7

Attachments:

Attachment A: Submitted Plan Set:

- Existing Conditions Site Plan
- Proposed Site Plan
- Garage Remodel Plans



Planning Report
October 19, 2015
Wayzata Planning Commission Meeting

File Case No:	PR 2015-15
Applicant:	City of Wayzata
Address of request:	N/A
PID number:	N/A
Prepared By:	Eric Zweber, Interim City Planner
Project Summary:	Repeal and replace the City of Wayzata relating to Telecommunications Antennas, Towers and Equipment. (City Code § 801.31)

Section 1: Background.

As part of the Telecommunications Study, the City Council and Planning Commission are updating the City's Telecommunications Ordinance in order to better regulate the location of new cellular towers and other equipment. This is in part because our current Communication Devices Ordinance (Section 31 of the Zoning Ordinance) does not contain much guidance on the subject.

At the March 3, 2015 council meeting, the City Council adopted a six month moratorium on new wireless communications facilities and towers pending study and consideration of changes to the city's regulations and official controls. At the September 1, 2015 council meeting, the City Council allowed the moratorium to expire.

On August 17, the City Council and Planning Commission conducted a joint workshop to review the draft Telecommunications Ordinance which included testimony from the four major telecommunications providers. Based on that testimony, as well as the comment from Mayor Willcox regarding the ability to install antennas on existing buildings, a number of changes were made to the August 11 draft Ordinance.

On October 5, the Planning Commission conducted a public hearing for the Telecommunications Ordinance. Representatives from Verizon and AT&T provided testimony. Following the testimony, the Planning Commission provided direction on revisions to consider based on that testimony. Based on that direction, a number of

documents are attached to this report for the Planning Commission to review and consider. First is a Report and Recommendation ([Attachment A](#)) to recommend that the City Council adopt the Telecommunications Ordinance. Second is a clean copy of the draft Ordinance ([Attachment B](#)). Third is a redline copy of the Ordinance ([Attachment C](#)) to consider the changes that have been made since the August 11 draft of the Ordinance.

Since the October 5 Public Hearing, staff has reached out to Verizon and AT&T to determine if they have any additional comments. Verizon has stated that they do not have any addition comments beyond their October 1 memorandum ([Attachment D](#)). AT&T has slightly revised their comments and provided some additional commentary. No new sections of the code were raised in AT&T's comments, which are provided in the redline form of the draft Ordinance ([Attachment E](#)). Staff's responses to AT&T's and Verizon's comments are provided in Section 2 below.

To determine the new regulations for the antennas on building added since the August 11 draft, the Interim City Planner has reviewed a number of metropolitan Cities' regulations for antennas mounted on existing buildings. The summary of those regulations are listed in [Attachment F](#).

Finally, a map of the locations where towers are allowed (shown in red) and the locations where antennas can be installed on or on top of a building (shown in mustard) is provided as [Attachment G](#).

Public Notice

A Notice of Public Hearing regarding the repeal of Chapter 801 Section 31 "COMMUNICATION RECEPTION/TRANSMISSION DEVICES" and replacement of Chapter 801 Section 31 "COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL ACCESSORY COMMUNICATION DEVICES" was published in the [Lakeshore Weekly](#) on September 22, 2015.

Section 2. Summary of Issues.

2.1 [Zoning Analysis](#).

	Location	Height Limit
Towers	Wayzata Public Works Facility or Wayzata West Middle School.	150 Feet.
Antennas on Existing Buildings	C -1, C-3 and PUD zoning within 300 feet of Wayzata Blvd.	15 Feet above the rooftop screening wall.
Micro-sites	Existing public utility structure within a Right-of-Way.	15 Feet above the existing utility structure.

Residential Accessory Antennas	Any residential District.	Ground Mounted: 15 Feet Roof Mounted: 6.5 Feet beyond the roof peak.
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Attachment G shows the location that the tower and antennas on existing building would be allowed.

2.2 Verizon Comments.

Verizon has provide a memorandum from Moss & Barnett (Attachment D) dated October 1 that comments on four sections of the Ordinance.

- Section 801.31.4(B)(iv)(c); Zoning District: Verizon requests that all non-single family zoning districts should be allowed to have antennas, particularly churches and the stealth technology used on their spires. Staff does not support this idea, particularly since most existing spires are non-conforming since they are more than five (5) above the highest point of the building. Staff believes the allowance for antennas within the PUD district allows the telecom vendors to work with the churches. Wayzata Community Church is currently zoned PUD.
- Section 801.31.4(B)(iv)(e); Antennas on Rooftop Screening Walls: Staff's intention is the same as with the proposed language. Staff has revised the language as Verizon request with clarification that the Rooftop Parapet Walls in the Design Review (801.09.7.2) is what is meant by a screening wall.
- Section 801.31.5(H); Ground-mounted Equipment: Verizon desires that this subsection be revised to weaken ("may" instead of "shall") the requirement for a common equipment building because it requires working with and foreseeing the common desire of other vendors to want to use the same telecommunications site. This is inconsistent with the co-location requirements of this Ordinance and the practice of the industry. It is very common that multiple vendors to use the same location and therefore it is reasonable to expect multiple vendors at a site. As a compromise, staff has added language that the first vendor does not have to build an oversized building for all possible vendors, but must design the building to be expanded (i.e. don't have doors, HVAC equipment and wires running through all the wall so that the next vendor could not expand the building).
- Section 801.31.5(R); Verizon wishes to limit the hours of maintenance to only City owned sites and allow parking on site if it is available. Staff does not agree with changing the hours of maintenance because the peaceful enjoyment of a homeowner's property is as important if they live next to non-City-owned property as a City-owned property. Staff can agree to parking on site if the parking area provided is paved and is screened.

2.3 AT&T Comments.

AT&T has provided twelve (12) comments in the form of a redline copy of the draft Ordinance (Attachment E).

- Section 801.31.1(C); Visual Impacts: AT&T proposed to change “camouflaging” to “screening”. Staff does not support this change. Screening often means toward the nearest property line, while camouflaging can mean in all directions.
- Section 801.31.2(O); Tower Definition: AT&T has revised its recommendation to twenty-five (25) feet instead of thirty (30) feet. Staff discussed heights of utility structures with the right-of-way with the City Engineer. The distribution power poles within the right-of-way are commonly thirty-five (35) feet, as are the light poles being installed on top of the stop lights at Bushaway Road and Wayzata Blvd. Staff has included the change to twenty-five (25) feet.
- Section 801.31.4(A); Existing Telecommunication Facilities: AT&T request that the language about the Federal Regulations be moved to a new subsection D so that it is clear that it applies to all facilities, not just the existing ones. The City Attorney concurs that the Federal Regulations apply to all facilities and the regulation language has been moved to a new subsection D.
- Section 801.31.4(B)(iii); Utility Structures within a Right-of-Way (ROW): AT&T request that antennas be allowed on all utility structures regardless of location. Staff does not agree because utility structures run through the backs of residential properties and through parks. People expect concentrations of utilities within the ROW but the City should not encourage additional utilities within area that people expect peaceful enjoyment, such as parks or backyards.
- Section 801.31.4(C)(i); Conditional Use Permit: AT&T request language added to exempt existing tower or base station as an “eligible facilities request”. This comment is no longer relevant since staff has supported the addition of the federal regulations as a new subsection D “Eligible Facilities Request”.
- Section 801.31.5; General Standards: AT&T proposes to exchange “deny” for “prohibit” and eliminate “based solely upon” in front of “requested”. These comments do not change the intent or implementation of the Ordinance and therefore do not support changes simple for semantics or wordsmithing. There is no material reason to revise the language.
- Section 801.31.5(G); Underground Equipment Storage: AT&T request this subsection be removed because it is not commercial reasonable to install underground equipment. That may be true today and the inclusion of “commercially reasonable” such address this issue. Some Planning Commissioners have stated that this subsection should be maintained in case technology improves to where the underground storage is possible.

- Section 801.31.5(H); Ground-mounted Equipment: AT&T requests that this subsection be removed, similar to Verizon's request. Staff does not support this removal for the same reasons as pointed out for Verizon's comment.
- Section 801.31.5(I); Construction: AT&T requests that the non-compliant repairs be increased from thirty (30) to sixty (60) days. Staff does not agree with this request. The most likely reason that City staff would be inspecting the site is because the vendor has pulled a permit and their contractor has recently completed the work. The vendor should (and it would be in their best interest to) bring the contractor back within thirty (30) days to complete or correct the work.
- Section 801.31.5(X); Advances in Technology: AT&T has requested that this subsection be removed. Instead, this subsection has been replaced with a new title "Advance in Stealth Technology" and completely new language. The new language requires the vendor to justify why the equipment chosen is the best for the vendor's needs over the least visual impact. This subsection also allows a third-party review at the vendor cost and the use of the lesser visual impact technology if the third-party technical review recommends that equipment.
- Section 801.31.5(Y); Removal: AT&T requests that the removal time period after the City's request is increased from thirty (30) to one hundred twenty (120) days, down from its original request of 180 days. Unlikely the construction timeline request above, it is unlikely that the vendor would have a contractor nearby and/or under contract at the time of the request. Additionally, enforcement of this provision would likely take longer than thirty (30) days and possibly longer than 120 days. Staff has revised this subsection 120 days.
- Section 801.31.6; Applications for Permit. AT&T requests that federal regulation language be added here similar to the new language in subsection 801.31.4(D). Since this is subsection 6 and not subsection 4, staff can support this language in this location and has included this revision.

2.4 Height of Antennas above Structures.

Staff would like to take one final opportunity to make sure that the Planning Commission is aware that in four places the draft Ordinance allows the telecommunication antennas to be mounted to extend up to fifteen (15) feet above the structure on which the antennas are mounted. Section 801.31.4(B)(iii)(a) allows antennas extend up to fifteen (15) feet above the utility structure that is mounted to. Section 801.31.4 (B)(iv)(e) antennas to extend up to fifteen (15) above the rooftop screening wall that the antenna is mounted to. Section 801.31.4(C)(i)(b) allows the antennas to extend up fifteen (15) above the highest point of the building it is attached to. Section 801.31.13 allows the antenna for a Residential Accessory Communication Device to extend up to fifteen (15) above the ground.

Staff requests that the Planning Commission specifically acknowledges these sections of the Ordinance and that it is the intent of the Planning Commission to allow these antennas

□

to extend up to fifteen (15) above the structures that is mounted to. This provision is consistent with the regulations of the communities surrounding Wayzata, but it is also difficult to use stealth technology to have the antennas appear like the structure that it is mounted to when they are fifteen (15) above that structure.

Section 3. Action Steps.

After considering the items outlined in this Report, the Planning Commission should pursue the following as an action step:

1. Approve the *Planning Commission Report and Recommendations*.
2. If the Commission wishes minor modifications to Ordinance or the *Report and Recommendations*, the Planning Commission should include those minor modifications within the motion.
3. If the Commission wishes to significantly modify the Ordinance or the *Report and Recommendations*, the Commission should direct staff to prepare a revised Report and Recommendations for review and adoption at the next Commission meeting.

Attachments:

Attachment A: Report and Recommendations

Attachment B: Draft Telecommunications Ordinance

Attachment C: Redline Telecommunications Ordinance

Attachment D: Verizon Memorandum dated October 1, 2015

Attachment E: AT&T Redlines of the Telecommunications Ordinance

Attachment F: Other Cities' Antenna on Building Regulations

Attachment G: Tower and Antenna Location Map



WAYZATA PLANNING COMMISSION

October 19, 2014

REPORT AND RECOMMENDATION ON AN ORDINANCE AMENDING THE WAYZATA ZONING ORDINANCE TO ADD A NEW SECTION 31 ON COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL ACCESSORY COMMUNICATIONS DEVICES

RECOMMENDATION

APPROVE

REPORT

Section 1. BACKGROUND

- 1.1 General. The City has engaged in the study and development of a new ordinance to address commercial telecommunications facilities and residential accessory communication devices and uses in the City, and has held several Planning Commission and City Council workshops and forums on the matter, including with telecommunication service providers and citizens of Wayzata. Staff has reviewed regulatory frameworks and policy considerations, and has received the input of the City's telecommunication service providers and the City Attorney's office. Based on the foregoing, staff has prepared a draft ordinance attached to this Report as Attachment A which would be an amendment to the City's existing Zoning Ordinance (the "Proposed Amendment").
- 1.2 Public Hearing. The Planning Commission held a public hearing on the Proposed Amendment on October 5 and October 19, 2015. The Notice of Public Hearing was published in the *Lakeshore Weekly* on September 22, 2015.

Section 2. LEGAL AUTHORITY AND STANDARDS

- 2.1 City Council has the discretion and authority under state law and City Code to amend the City's Zoning Ordinance. Minn. Stat. Sec. 462.357; Wayzata City Code Section 801.03. A zoning ordinance amendment may be initiated by the governing body, the planning agency or by a property owner. Minn. Stat. Sec. 462.357, Subd. 4; City Code Section 801.03.
- 2.2 Under the City's Zoning Ordinance, the City Council acts on any proposed amendment upon receiving the report and recommendation of the Planning Commission. Sec. 801.03.2. In considering a proposed amendment to the Zoning Ordinance, the Planning Commission shall consider the possible adverse effects of the proposed amendment. Its judgment shall be based upon (but not limited to) the following factors:
1. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
 2. The proposed use's conformity with present and future land uses of the area.
 3. The proposed use's conformity with all performance standards contained herein (i.e., parking, loading, noise, etc.).
 4. The proposed use's effect on the area in which it is proposed.
 5. The proposed use's impact upon property value in the area in which it is proposed.
 6. Traffic generation by the proposed use in relation to capabilities of streets serving the property.
 7. The proposed use's impact upon existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity.

Wayzata City Code Section 801.03.2.F.

Section 3. Findings

- 3.1 Based on the studies and reports of City Staff, and comments and information presented at the workshops and Public Hearing on the Application, the information provided by service providers and the City Attorney, the Planning Commission of the City of Wayzata makes the following findings with respect to the Proposed Amendment:

1. The Proposed Amendment would not allow a use that would contravene any specific policies and provisions of the official City Comprehensive Plan.
2. The Proposed Amendment would only allow uses that conform to present and future land uses in the City's business and commercial districts. All requests for Telecommunications Facilities would be reviewed and regulated through a Conditional Use Permit process.
3. The Proposed Amendment would not allow uses that do not conform with the performance standards contained in the Zoning Ordinance (parking, loading, noise, etc.).
4. The Proposed Amendment would not allow uses that would have a negative impact on the areas in which they are proposed in that the Proposed Amendment would reasonably regulate the use and location of telecommunications facilities, equipment and accessories within the limits of governing federal law.
5. The Proposed Amendment will not have any direct impact upon property values in the City.
6. The Proposed Amendment will not allow any use that would have a negative impact traffic generation in the City.
7. The Proposed Amendment will not allow a use that would negatively impact existing public services and facilities and would provide a framework for needed telecommunications services in the City.

Section 4. Recommendation

- 4.1 Proposed Amendment. Based on the Findings of this Report, the Planning Commission recommends approval of the Proposed Amendment, as set forth in Attachment A.

Adopted by the Wayzata Planning Commission this _____ day of October, 2015.

Chair, Planning Commission

Attachment A

Proposed Amendment (Draft Ordinance _____)

000043/204032/2235350_1

SECTION 31
COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL
ACCESSORY COMMUNICATIONS DEVICES

Section 801.31:

- 801.31.1: Purpose and Intent
- 801.31.2: Definitions
- 801.31.3: Permit Required for Telecommunication Facilities
- 801.31.4: Building and Design Standards for Telecommunication Facilities
- 801.31.5: General Standards for Telecommunication Facilities
- 801.31.6: Applications for Telecommunication Facilities Permit
- 801.31.7: Review of Permit Applications
- 801.31.8: Appeals
- 801.31.9: Revocation of Permit
- 801.31.10: No Recourse Against the City
- 801.31.11: Indemnification
- 801.31.12: Severability
- 801.31.13: Residential Accessory Uses

1. Purpose and Intent.

The purpose of this section is to establish objective and balanced regulations for the siting, screening and operation of wireless telecommunication facilities and equipment in order to accommodate Wireless Communication systems within the City while minimizing any adverse impacts on the City's natural resources, aesthetics, public spaces, surrounding neighborhood property values, and the general health, safety and public welfare, all as allowed under applicable Federal law. This section recognizes that these wireless communication systems provide a valuable service to the public but that they are not a public utility. The specific purposes of this section are to:

- A. Specify allowed locations of commercial Telecommunication Facilities and Towers in the City;
- B. Protect residential, recreational and park areas from encroachment by commercial operations, including, but not limited to, Telecommunication Facilities and Towers;
- C. Minimize adverse visual impacts of Telecommunication Facilities and Towers through careful design, optimum siting, appropriate landscaping, innovative camouflaging techniques and stealth poles;
- D. Require, where possible, the co-location of Telecommunications Towers and Antennas support structures on Towers or existing structures as a primary option rather than construction of multiple single-use Towers;

- 1 E. Require utilization of technological designs that either eliminate or reduce the need for
2 erection of new Tower structures to support Telecommunications Facilities;
3
4 F. Minimize potential damage to property caused by Telecommunication Facilities and
5 Towers by ensuring such structures are soundly and carefully designed, constructed,
6 modified, maintained, and removed when no longer used or are determined to be
7 structurally unsound;
8
9 G. Ensure that Telecommunication Facilities and Towers are compatible with surrounding
10 land uses;
11
12 H. Provide development standards for Wireless Telecommunication Facilities that are
13 consistent with the requirements of the Federal Telecommunications Act of 1996, as
14 amended, or other applicable Federal, State and local laws, statutes, ordinances and
15 regulations.

16
17 **2. Definitions.**
18

19 For the purposes of this section, the terms below have the meaning given to them, unless the
20 context clearly indicates a different meaning:
21

- 22 A. **"Accessory Equipment"** means the wires, cables, generators, air conditioning units, and
23 other equipment or facilities that are used in conjunction with Telecommunication
24 Facilities and Telecommunication Equipment
25
26 B. **"Applicant"** means any person or entity who files an application for any permit or is party
27 to any lease agreement required by this Ordinance for the construction, replacement,
28 installation, or alteration of wireless communication facility or any component thereof.
29
30 C. **"Antenna"** means any exterior transmitting or receiving device mounted on a Tower,
31 Monopole, building, or other structure and used in communications that radiate or capture
32 electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar
33 signals), wireless telecommunications signals or other communications signals.
34 "Antenna" does not include a lightning rod.
35
36 D. **"Antenna Support Structure"** means any new or existing Tower, building, water tower,
37 or electric transmission tower carrying over 200 kilo volts of electricity that can be used
38 for the location of Antennas without increasing the height or mass of the existing structure.
39
40 E. **"Engineer"** means a radio, electrical, structural, or mechanical engineer licensed by the
41 State of Minnesota.
42
43 F. **"Equipment Shelter"** means an enclosed structure at the base of or near a
44 Telecommunication Facility, Tower, or Antenna within which are housed, among other
45 things, batteries, generators, air conditioning units, wireless communications or electrical

equipment, or other Accessory Equipment, which may be connected to the Telecommunications Facility, Tower or Antenna by cable.

G. **"Co-location"** means the sharing of structures by two or more wireless service providers on a single support structure or otherwise sharing a common location.

H. **"Monopole"** means a slender self-supporting Tower used to support Antennas and Accessory Equipment.

I. **"Permit Holder"** a person or entity who holds a permit issued pursuant to this Ordinance for a Telecommunications Facility.

J. **"Public Utility Structure"** means a structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications.

K. **"Residential Accessory Communication Devices"** means any satellite dishes, television Antennas, radio Antennas, amateur (ham) radio Antennas, and similar communication transmission/reception devices and associated Accessory Equipment that are a permitted accessory use within a residential district.

L. **"Stealth Design"** means state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include architecturally screening roof-mounted Antennas and Accessory Equipment; integrating Telecommunications Facilities into architectural elements; nesting Telecommunications Facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the Telecommunications Facilities; and designing Towers to appear other than as Towers, such as light poles, power poles, flag poles, and trees.

M. **"Telecommunications Equipment"** means Antennas, Accessory Equipment, or Towers.

N. **"Telecommunications Facilities"** means any facility or location maintained by a commercial enterprise where Telecommunications Equipment is located.

The following shall not be considered Telecommunication Facilities:

- i. Licensed amateur (ham) radio Antennas, regulated under subsection 801.31.13 below.
- ii. Television Antennas and satellite dish Antennas for reception within individual homes or businesses, regulated under subsection 801.31.13 below.
- iii. Temporary Telecommunication Facilities placed in service during an emergency declared by a government agency or for special events requiring wireless service capacity or coverage that is not available from existing Telecommunication Facilities.

O. **"Tower"** means any of the following: a ground or roof mounted pole; spire; free standing, self-supporting lattice or monopole structure; or combination thereof taller than twenty-five (25) feet, including but not limited to supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an Antenna, meteorological device, or similar apparatus above grade (except amateur radio Antennas).

P. **"Wireless Communications"** means any personal wireless services as defined in the Federal Communications Act of 1996, including FCC licensed commercial wireless Telecommunications services including, but not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), global system of mobile communication (GSM), paging and similar services that currently exist or may be developed.

3. Permit Required for Telecommunication Facilities.

In addition to any Conditional Use Permit that may be required below, prior to the construction or operation of a Telecommunications Facility, the owner and operator of the Telecommunications Facility must obtain a permit for the proposed Telecommunications Facility according to the provisions of this Ordinance, termed a "Telecommunication Facilities Permit".

4. Building and Design Standards and Allowed Locations for Telecommunications Facilities. All Telecommunications Facilities shall be constructed and maintained in accordance with the following standards:

A. Existing Telecommunication Facilities.

Existing Telecommunications Facilities located on or attached to existing structures, prior to the adoption of this Ordinance, are regulated by the provisions of the zoning district for each such parcel containing said structure. Once the leases for existing Telecommunication Facilities expire or are otherwise terminated, the owner of the Telecommunication Facilities shall apply for a Telecommunication Facilities Permit under this Ordinance and those existing Telecommunications Facilities shall be required to conform to all requirements of this Ordinance for new Telecommunication Facilities. The City may, among other remedies, require relocation of equipment, at the Telecommunication Facilities expense, to permitted areas under this Ordinance.

B. New Telecommunications Facilities.

- i. New Telecommunications Towers shall be located only on the following parcels owned and/or controlled by the City of Wayzata, unless applicant obtains a Conditional Use Permit as further described below (in addition to the Telecommunication Facilities Permit required under subsection 3

above), with the exact location on such parcels determined at the sole discretion of the Wayzata City Council:

<u>Property Name</u>	<u>Property Identification Number</u>
City of Wayzata Public Works Facility	01-117-23-22-0004
Wayzata West Middle School	06-117-22-22-0008

- ii. Antennas shall be located on a new or replacement Tower at the locations permitted for Telecommunications Facilities only if the Applicant complies with the following requirements, in additions to the other requirements of this Ordinance:
- a) The Applicant shall provide documentation and/or an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Antennas is necessary to meet the coverage and capacity needs of its system. The Applicant shall provide a network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits. The analysis shall also show the Antennas would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also pay the reasonable expenses of a radio or electrical engineer retained by the City, at the City's option, to review this analysis;
- b) The new or replacement Telecommunications Facilities shall use as many Stealth Design techniques as reasonably possible and include non-proprietary information on stealth design technology. Economic considerations or hardships shall not be the sole justification for failing to provide Stealth Design techniques.
- c) The new or replacement Tower and Antenna, including attachments other than lightning rods, shall not exceed 150 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height up to 190 feet if the Council finds the increase in height would not have a significant visual impact, would not have a negative property value impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The City Council may waive this height limitation for a Tower and/or Antenna if used wholly or partially for essential public services, such as public safety.
- iii. A new Antenna may be attached to an existing public utility structure within a right of way if:
- a) The Antenna does not extend more than fifteen (15) feet above the top of the existing utility structure.

- 1 b) The Antenna is no larger than three (3) cubic feet and has no individual
2 surface larger than four (4) feet.
3
4 c) The Antenna extends outward from the utility structure no more than three
5 (3) feet.
6
7 d) There is no ground mounted equipment so long as the existing public utility
8 structure is available for the mounting of such equipment.
9
10 e) There is no interference with public safety communications or with the
11 original use of the public utility structure.
12
13 f) The Applicant agrees that the Antenna must be removed and relocated, at
14 Applicant's expense, if the road authority requires the removal and
15 relocation of the public utility structure.
16
17 iv. New Antenna may be attached to an existing building if:
18
19 a) the Applicant provides an analysis prepared by a radio or electrical
20 engineer demonstrating the proposed location is necessary to meet the
21 coverage and capacity needs of Applicant's. The analysis shall show a
22 network map describing all of the Applicant's Telecommunications
23 Facilities providing coverage within the City's limits and confirm the
24 proposed Antennas would not cause interference with other existing or
25 approved Telecommunications Equipment. The Applicant shall also pay
26 the reasonable expenses of an expert retained by the City, at the City's
27 option, to review this analysis;
28 b) the new Antenna and the associated Accessory Equipment use as many
29 Stealth Design techniques as reasonably possible. Economic
30 considerations or hardships shall not be the sole justification for failing to
31 provide Stealth Design techniques;
32
33 c) the building upon which the Antenna is to be located is located on a parcel
34 of land zoned C – 1 Office and Limited Commercial District, C-3 Service
35 District or PUD Planned Unit Development;
36
37 d) the building upon which the Antenna is to be located is within 300 feet of
38 the Wayzata Blvd E right-of-way;
39
40 e) the Antenna is attached to the façade of the building or attached on or
41 within rooftop screening wall (i.e. §801.09.7.2). A façade mounted
42 Antenna shall not extend above the cornice line and a rooftop or screening
43 wall mounted Antenna shall not extend more than fifteen (15) feet above

the screening wall. Façade and screening wall mounted Antenna shall as closely as possible match the color of the underlying building material.

- f) Accessory Equipment shall be housed within an existing structure or within rooftop parapet screening walls whenever possible. If a new equipment building is necessary, it shall be situated to the rear or side of the principal use and shall be screened from view by landscaping where appropriate. If a new equipment building is necessary, the building shall be constructed of materials and color scheme compatible with the principal building.

C. Conditional Use Permits.

i. Telecommunication Facilities may not be located on any sites other than those that are designated in Section 801.31.4.B unless the Applicant first obtains a Conditional Use Permit for the location. Such a Conditional Use Permit may be approved provided all of the following are met:

- a) The requirements of Section 801.04 have been considered and satisfactorily met.
- b) Antennas attached to an existing building do not extend more than fifteen (15) feet above the highest point of the building.
- c) The Applicant provides documentation and/or an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Telecommunication Facility is necessary to meet the coverage and capacity needs of its system. The documentation and/or analysis must also show the Telecommunication Facilities would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also provide a network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits. The Applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the City, at the City's option, to review this analysis.
- d) The new or replacement Telecommunications Facilities must use as many Stealth Design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide Stealth Design techniques.
- e) New or replacement Tower and/or Antennas must comply with the provisions of Section 801.31.5 below.
- ii. The City shall have the following priority ranking of land uses (as defined in the City of Wayzata Comprehensive Plan) suitable for potential new or

replacement Telecommunication Facilities when considering a Conditional Use Permit application, with (a) being the highest priority and (d) being the lowest priority:

- a) City Owned Property that is adjacent to highway rights of way and not adjacent to or adjoining residential property.
- b) Institutional/Public Property that is not adjacent to or adjoining residential property.
- c) Semi-Public/Private Property that is not adjacent to or adjoining residential property.
- d) Mixed Use Commercial or Service Commercial properties that are not adjacent to or adjoining residential property.

If the proposed site is not the highest priority listed above, then a detailed explanation shall be provided as to why a site of a higher priority was not selected. The explanations shall include the reason or reasons why such a Conditional Use Permit should be granted for the proposed site and a description of the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

iii. CUPs for new or replacement Telecommunication Facilities shall be prohibited in the following land use categories, as defined in the City of Wayzata Comprehensive Plan:

- a) Parcels guided and utilized for residential purposes, including single family and multiple family.
- b) Parcels guided and utilized for Park or Public Open Spaces
- c) Parcels guided and utilized for Central Business District, Mixed Use Residential, or Downtown Mixed Use District.

D. Eligible Facilities Request

Notwithstanding the above, nothing in this Section 4 shall be read to allow the City to prohibit a Telecommunication Facilities Permit based solely upon a request by the owner/operator for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended.

5. General Standards for Telecommunication Facilities.

All Telecommunications Facilities must comply with the following standards (although nothing in this Section 5 shall be read to allow the City to prohibit a Telecommunication Facilities Permit based solely upon a request by the owner/operator for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47

U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended.)

A. **Vertical projection on Antenna support structures.** Antennas mounted on an existing Antenna support structure shall not extend more than 15 feet above the height of the structure to which they are attached. Wall or façade-mounted Antennas shall not extend above the cornice line and shall be constructed of a material or color that matches the exterior of the building.

B. **Horizontal projection.** Antennas shall not project out from the side of the existing Antenna support structure, Tower or wall or facade by more than three feet.

C. **Fall Zone Analysis.** The Applicant must submit a fall zone analysis report completed by a qualified and licensed engineer who shows the Telecommunications Facilities do not pose a threat to general health, safety and welfare of the City.

D. **Setbacks.** A new Tower shall meet the building setback that is established for the district where it is to be located and the following additional standards:

i. The Tower shall be setback from all residential property lines at least one (1) foot for each foot in height, but shall have a minimum setback of at least one hundred (100) feet. The Tower setbacks may be increased by the City Council dependent on the results of the engineered fall zone analysis report submitted by the Applicant as part of the permit application.

ii. Towers and Telecommunications Facilities shall not encroach upon any easements unless written permission is obtained from the underlying property owner burdened by the easement and the beneficiary of the easement.

iii. The required setbacks may be reduced or the location in relation to a public street modified, at the sole discretion of the City Council, when the Telecommunications Facility is integrated into an existing or proposed structure such as a building, light or utility pole.

E. **Height.** The height of an Antenna and/or Tower shall be the minimum necessary to meet the Applicant's coverage and capacity needs, as verified by an electrical engineer or other appropriate professional. Any new or replacement Tower and Antenna, including attachments other than lightning rods, shall not exceed 150 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height up to 190 feet if the Council finds: (i) the increase in height would not have a significant visual impact, (ii) would not have a negative property value impact on surrounding properties because of proximity, topography or screening by trees or buildings or (iii) would accommodate two or more users.

- 1 F. **Exterior surfaces.** Towers and Antennas shall be painted a non-contrasting color
2 consistent with the surrounding area such as: blue, gray, green, brown, or silver, or
3 have a galvanized finish to reduce visual impact. Metal Towers shall be constructed
4 of, or treated with, corrosion-resistant material.
5
- 6 G. **Underground Equipment Storage.** If commercially reasonable, Accessory
7 Equipment and/or equipment storage facilities shall be designed to be placed and
8 be built underground adjacent to the Telecommunications Facility. If such
9 underground placement is not commercially reasonable, then such Accessory
10 Equipment and/or equipment storage facility shall be allowed to be placed above-
11 ground, subject to the restrictions of this Ordinance, including, but not limited to
12 screening of existing equipment.
13
- 14 H. **Ground-mounted equipment.** If deemed commercially unreasonable for the
15 Accessory Equipment and/or equipment storage facilities to be located
16 underground, the ground-mounted Accessory Equipment and/or equipment storage
17 facilities shall be architecturally designed to blend in with the surrounding
18 environment, including the principal structure and/or shall be screened from view
19 by suitable vegetation, except where a design of non-vegetative screening better
20 reflects and compliments the character of the surrounding neighborhood. No more
21 than one Equipment Shelter or accessory building is permitted for each Tower.
22 Equipment Shelters or accessory buildings shall be designed to accommodate
23 additional space needed for the co-location of additional Antennas at the site. The
24 additional space must either be built within the first shelter/building or that
25 shelter/building must be designed to allow for future expansions and/or additions.
26 Design of the building or equipment cabinet, screening and landscaping are subject
27 to a site plan review by City Staff, Planning Commission, and City Council, and
28 any applicable Design Standards criteria under Section 801.09 of the Wayzata
29 Zoning Ordinance. The Applicant shall be responsible for maintaining the structure
30 in a high-quality condition. If the Applicant abandons or vacates the structure, it
31 shall be forfeited to the City or torn down by the Applicant at their expense, at the
32 discretion of the City Council.
33
- 34 I. **Construction.** Telecommunications Facilities shall be in compliance with all
35 buildings and electrical code requirements. All applicable federal, state and local
36 agency licenses and/or permits shall be obtained. A Tower shall be designed and
37 certified by a licensed structural engineer to be structurally sound and in
38 conformance with the building code. Structural design, mounting and installation
39 of the Telecommunications Facilities shall be in compliance with the
40 manufacturer's specifications. If, upon inspection, the City concludes that a Tower
41 or other portion of a Telecommunications Facility fails to comply with such codes
42 and standards and constitutes a danger to persons or property, then upon notice
43 being provided to the owner of the Telecommunication Facility or Tower, the
44 owner shall have thirty (30) days to bring such Tower or Telecommunication
45 Facility into compliance with such standards. Failure to bring such Tower or
46 Telecommunication Facility into compliance with such thirty-day period shall

1 constitute grounds for the removal of the Tower or Telecommunication Facility at
2 the owner's expense.

3
4 J. **Interference with Public Safety Telecommunications.** No Tower or
5 Telecommunications Facility shall interfere with public safety
6 Telecommunications. All Towers and Telecommunication Facilities shall comply
7 with FCC regulations and licensing requirements.

8
9 K. **Security Fencing and Screening.** Telecommunication Facilities and Towers shall
10 be enclosed by security fencing not less than the height of the equipment located
11 therein and shall also be equipped with an appropriate anti-climbing device.
12 Fencing within one hundred (100) feet of a residential or parking property shall be
13 constructed of a well-designed fence of wood or other environmentally sound
14 material, and be compatible with the surrounding character of the area. The
15 Telecommunication Facilities and Towers shall also include a landscape screen, at
16 least six (6) in height, around the perimeter of equipment area, as approved by the
17 City Council.

18
19 L. **Other Protections.** The City may require shields to protect from ice falling from
20 Towers, anti-climbing devices to prevent unauthorized persons from climbing
21 Towers, or other appurtenances necessary to protect life and property.

22
23 M. **Noise.** If the proposed Telecommunications Facility includes equipment that
24 causes significant sound levels, sound buffers may be required including but not
25 limited to, baffling, barriers, enclosures, walls and plantings. The Applicant shall
26 submit an acoustical analysis (measured to the property line) and report prepared
27 by a licensed and/or accredited sound engineer certifying that the noise to be
28 generated from the proposed Telecommunication Facility shall not impact adjacent
29 properties. Said report shall include, without limitation, a written description of all
30 noise generated by the Facility, including retractable monopole motors, Antenna
31 rotators, power generation, heating or air conditioning, and related equipment, and
32 shall include the estimated times, frequency, duration and decibel levels of the
33 noise. All equipment shall conform to Minnesota Pollution Control Agency decibel
34 standards.

35
36 N. **Sensitive Habitats.** No Telecommunication Facility shall be located in
37 environmentally sensitive habitats, including but not limited to wetlands,
38 shorelines, established animal habitats, conservation districts, and significant tree
39 groups, unless mitigation measures can be adopted which would reduce potential
40 impacts to levels of non-significance.

41
42 O. **Radio Frequency Emissions.** Telecommunications Facilities shall comply with
43 Federal Communication Commission standards for radio frequency emissions and
44 interference.
45

- 1 P. **Interference.** No Telecommunication Facility shall be permitted that causes
2 interference with commercial or private use and enjoyment of other legally
3 operating telecommunications devices including, but not limited to, radios,
4 televisions, personal computers, telephones, personal communications devices,
5 garage door openers, security systems, and other electronic equipment and devices
6 in violation of any Federal Communication Commission standards relating to radio
7 frequency interference. Unless otherwise prohibited by Federal Communication
8 Commission standards, an Applicant shall furnish a state registered engineer's
9 certification that no such interference shall occur, or identify what interference may
10 occur and how the Applicant shall mitigate any potential interference that may
11 occur.
- 12
- 13 Q. **Risk of Danger.** Telecommunications Facilities and Towers shall not pose a risk
14 of explosion, fire, or other danger due to its proximity to volatile, flammable,
15 explosive or hazardous materials. Telecommunication Facilities, Towers,
16 Antennas, and Accessory Equipment shall be subject to state and federal
17 regulations pertaining to non-ionizing radiation and other health hazards related to
18 such Facilities. If new, more restrictive standards are adopted, the Facilities shall
19 be made to comply or continued operations may be restricted by the City Council.
20 The cost of verification of compliance shall be borne by the Applicant.
- 21
- 22 R. **Maintenance.** All Telecommunication Facilities and Towers shall at all times (i)
23 be kept and maintained in good condition, order and repair so that the same shall
24 not menace or endanger the life or property of any person, and (ii) allow sufficient
25 access for service vehicles and personnel. Maintenance of equipment shall be
26 scheduled for between 7:00am-6:00pm, Monday through Friday, unless in case of
27 emergency or otherwise agreed to by the City. Service vehicles for equipment
28 maintenance shall be parked on city streets, unless paved and screened off-street is
29 available at the site. In the case of maintenance of Telecommunication Facilities
30 on the City Water Tower, service vehicles shall park on the service entrance of the
31 City Water Treatment Plant, whenever possible.
- 32
- 33 S. **Co-location opportunity.** The Applicant, the Tower owner, the landowner, and
34 their successors and assigns shall allow the shared use of the Tower if an additional
35 user agrees in writing to meet reasonable terms and conditions for shared use, shall
36 submit a dispute over the potential terms and conditions to binding arbitration, and
37 shall sign the Conditional Use Permit agreeing to these requirements. The City
38 Council may waive these co-location requirements if necessary to implement
39 stealth design.
- 40
- 41 i. All Telecommunications Facility providers shall cooperate with each other
42 in co-locating Telecommunication Facilities and shall exercise good faith
43 in co-locating with other licensed carriers and in the sharing of sites,
44 including the sharing of technical information necessary to evaluate the
45 feasibility of collocation. In the event a dispute arises as to a co-location
46 issue, the City may require a third-party technical study to evaluate the

1 feasibility of co-locating at the expense of each wireless
2 telecommunications providers involved in the third-party study;

3
4 ii. All proposed new Towers shall be designed to accommodate both the
5 Applicant's Antennas and Antennas for as many other licensed carriers as
6 can be technically located thereon, but not less than one additional;

7
8 iii. All new Towers and Facilities owned by a telecommunications provider
9 shall be made available for use by the owner or initial user thereof, together
10 with as many other licensed carriers as can be technically located thereon,
11 but not less than one additional;

12
13 iv. All proposed new Towers shall be designed to allow for future
14 rearrangement of Antennas or Tower modifications, and to accept Antennas
15 mounted at varying heights unless the City otherwise agrees in order to
16 accommodate Stealth Design techniques;

17
18 T. **Successors and Assigns.** Any Permit or lease for a Telecommunications
19 Facility shall run with the Property, and shall be binding upon and inure to the
20 benefit of the parties, their respective successors, personal representatives, and
21 assigns.

22
23 U. **External messages.** No advertising message or identification signs, other than
24 warning or equipment information signs as legally required, shall be affixed to the
25 Telecommunications Facilities.

26
27 V. **Lighting.** Telecommunications Facilities or Towers shall not be artificially
28 illuminated unless required by law or by a governmental agency to protect the
29 public's health and safety or unless necessary to facilitate service to ground-
30 mounted equipment. Any lighting or artificial illumination utilized shall be
31 shielded and not cast glare onto adjacent properties. All lighting shall be measured
32 to the property line.

33
34 W. **On-site employees.** There shall be no employees on the site at a
35 Telecommunications Facility on a permanent basis. Occasional or temporary repair
36 and service activities are allowed.

37
38 X. **Advances in Stealth Technology.** Whenever an applicant proposes to install
39 and/or replace antennas or other telecommunications equipment, the Applicant
40 shall submit a report describing all available technology for installation or
41 replacement. The report shall include the purpose of equipment to be installed
42 (expand coverage, expand capacity, expand bandwidth, etc.) and the performance
43 specifications and physical dimensions of the equipment. The report conclusions
44 must provide an analysis of performance versus visual impacts and/or stealth
45 technology. The City retains the right to evaluate the reports analysis and perform
46 a third party technical review at the applicants cost. The City shall have the ability

to require the stealth or lower visual profile equipment based on the third party technical recommendation.

Y. **Removal.** After one hundred twenty (120) days' notice from the City to the Permit Holder all Telecommunications Facilities, Antennas, or Towers shall be required to be removed at the Permit Holder's expense, if such improvement is found to be in violation of any portion of this Ordinance by the City and such violation is not cured within such thirty day time period. Obsolete or unused Telecommunications Facilities and all related equipment shall be removed within six (6) months after cessation of their use at the site, unless an exemption is granted by the City Council. Telecommunications Facilities and related equipment that have become hazardous shall be removed or made not hazardous within 30 days after written notice to the current Permit Holder and to any separate landowner, unless an exemption is granted by the City Council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and to the taxpayer of the property listed in the Hennepin County tax records. Telecommunications Facilities and all related equipment that are not removed within this time are declared to be public nuisances and may be removed by the City. The City may assess its costs of removal against the Property.

Z. **No Recourse Against the City.** Every permit shall provide that, without limiting such immunities as the City or other persons may have under applicable law, an Applicant/Permit Holder shall have no monetary recourse whatsoever against the City or its elected officials, boards, commissions, agents, employees or volunteers for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement or lack of enforcement of this Ordinance or the City's exercise of its authority pursuant to this Ordinance, a permit, a lease, or other applicable law, unless the same shall be caused by criminal acts or by willful gross negligence. Nothing herein shall be construed as a waiver of sovereign immunity.

6. Applications for Telecommunications Facilities Permit.

Permit Application. An application for a permit for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station shall include information sufficient to demonstrate that the modification meets the standards set forth in 47 C.F.R. Section 1.40001.

For all other Telecommunications Facilities Permit applications, the following requirements apply. In addition to an Applicant's name, address, certificate of survey, grading and landscaping plans, and other such similar information, an application for a permit under this Section shall include the following:

A. A scaled site plan clearly indicating the location, type and height of the proposed Telecommunication Facility, Tower, or Antenna, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access,

setbacks from property lines, elevation drawings of the proposed equipment and any structures, topography, parking and any other information deemed by the City Staff to be necessary to assess compliance with this Section.

- B. A visual simulation of the proposed Telecommunication Facility Tower or Antenna. Visual simulation shall consist of either a physical mock-up of the Telecommunication Facility Tower or Antenna, balloon simulation, computer simulation, photo simulation, or other similar simulation. In instances where the proposed Telecommunications Facility Tower or Antenna is located near a residential area, photo simulations shall be submitted of the proposed Telecommunication Facility Tower or Antenna from the nearest residential neighbors unless the owners of such residential property refuse to allow the required photo to be taken.
- C. A report from a qualified and licensed professional engineer which:
- i. Demonstrates that the Telecommunication Facility, Tower, Antenna and/or Accessory Equipment comply with the structural and electrical standards of this Section.
 - ii. Describes the Tower height, if utilized.
 - iii. Documents the height above grade for all potential mounting positions for co-locating Antennas and the minimum separation distance between Antennas.
 - iv. Describes the Tower's capacity, if utilized, including the number and type of Antennas it can accommodate.
 - v. A network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits.
 - vi. Documents what steps the Applicant shall take to avoid interference with established public safety Telecommunications.
 - vii. Includes an engineer's stamp and registration number.
- D. A written statement acknowledging that failure to comply with this Section and the conditions of permit approval shall result in the revocation of the permit and removal of the Telecommunications Facility, Antenna, and/or Tower;
- E. Documentation that the Applicant has applied for and/or obtained any licenses and/or approvals that are required by federal and state agencies.
- F. A written statement indicating that the expenses incurred by the City to review and process the application, and to enforce the provisions of the permit shall be reimbursed by the Applicant.
- G. A written statement which requires the Applicant to utilize the procedures established by the Federal Communications Commission to resolve any complaints received relating to interference allegedly caused by the Telecommunications Facility, Antenna, and/or Tower.

- 1 H. A written statement indicating that the Applicant shall cooperate in good faith and
2 fair dealing in co-locating Telecommunications Facilities, Antenna and/or Towers.
3
- 4 I. A written statement indicating that the Telecommunications Facility, Antenna,
5 and/or Tower shall be maintained in good and safe condition and its original
6 appearance and concealment, disguise or camouflage elements incorporated into
7 the design at the time of approval shall be preserved. Such maintenance shall
8 include, but not be limited to, painting, repair of equipment, and maintenance of
9 landscaping.
10
- 11 J. A written statement authorizing the City to conduct periodic inspections to
12 determine that the Telecommunications Equipment complies with the provisions of
13 this Section, any conditions of approval and all safety and building codes and
14 permits issued. This statement shall give the City the right to conduct such
15 inspections at any time upon a reasonable notice of five (5) business days to the
16 Applicant, and that all expenses related to such inspections shall be borne by the
17 Applicant.
18
- 19 K. A written statement indicating that the Applicant understands that
20 Telecommunications Facilities, Antennas, and/or Towers which have not been used
21 for six (6) months shall be deemed abandoned, and shall be removed pursuant to
22 this Section.
23
- 24 L. A written statement requiring the Applicant or current Permit Holder to notify the
25 City that the Telecommunications Facility, Antenna, and/or Tower continue to be
26 in operation. The notice of continuing operation shall be sent to the City Manager
27 annually by certified mail within the last two (2) weeks of the month of December.
28 The City shall provide written notice of failure to provide the required statement
29 with a requirement that such statement be provided within 14 days from the date of
30 such notice.
31

32 **7. Review of Permit Applications.**

33
34 The City shall process all applications for Telecommunication Facilities Permits in a timely
35 manner and in accordance with established procedures and City Code.
36

37 **8. Appeals.**

38
39 At any time within thirty (30) days after a written order, requirement, determination or final
40 decision has been made by the Zoning Administrator or other official interpreting or
41 applying this Section, except for actions taken in connection with prosecutions for
42 violations thereof, the Applicant or any other person affected by such action may appeal
43 the decision in accordance with the provisions of the Zoning Ordinance.
44

45 **9. Revocation of Permit.**

A material breach of any terms and conditions of a permit issued for a Telecommunication Facility under this Section and the Zoning Ordinance may result in the revocation of the permit by the City. Penalties for a violation of a permit or this Section may include fines and removal of the Telecommunication Facility, Tower, or Antenna at the Applicant's/Permit Holder's expense.

10. No Recourse Against the City.

Every application for and issued permit shall provide a written acknowledgement, agreement and release from the Applicant and Permit Holder that, without limiting such immunities as the City or other persons may have under applicable law, an Applicant and Permit Holder shall have no monetary recourse whatsoever against the City or its elected officials, boards, commissions, agents, employees or volunteers for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement or lack of enforcement of this Ordinance or the City's exercise of or failure to exercise its authority pursuant to this Ordinance, a permit, a lease, or other applicable law, unless the same shall be caused by criminal acts or by gross negligence. Nothing herein shall be construed as a waiver of sovereign immunity.

11. Indemnification.

Each permit issued pursuant to this Section shall have as a condition of the permit, a requirement that the Applicant indemnify and hold harmless the City and its officers, agents, and employees from actions or claims of any description brought on account of any injury or damages sustained by any person or property resulting from the issuance of the permit and conduct of the activities authorized under said permit.

12. Severability.

If any section, subsection, sentence, clause or phrase of this Section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Section. The City Council hereby declares that it would have passed this Section and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid.

13. Residential Accessory Uses.

Residential Accessory Communication Devices are a permitted accessory use within residential districts provided they meet the following conditions:

- A. **Use.** They are for use by residents upon whose property the Residential Accessory Communication Devices are located.

- 1 B. **Height.** A ground mounted Residential Accessory Communication Device height
2 shall not exceed fifteen (15) feet unless approved as a Conditional Use Permit by
3 the City Council.
4
- 5 C. **Yards.** The Residential Accessory Communication Device shall not be located
6 within the required front yard setback, a required side yard or any side yard abutting
7 a street. Communication devices shall be located five (5) feet or more from rear lot
8 lines and shall not be located within a utility easement.
9
- 10 D. **Roofs.** The Residential Accessory Communication Device may be placed on the
11 roof of any authorized structure on the premises. The height of the Residential
12 Accessory Communication Device shall not exceed six and one-half (6-1/2) feet
13 above the peak of the roof, unless approved by a Conditional Use Permit by the
14 City Council.
15
- 16 E. **Neighboring Property Impact.** In cases where no building permit is required, the
17 Residential Accessory Communication Device shall be so located that in the event
18 it falls, it shall not fall on adjoining property.
19
- 20 F. **Building Permits.** A building permit shall be required for the installation of any
21 Residential Accessory Communication Device which requires a Conditional Use
22 Permit, or for any device which has a structural surface exposure of greater than
23 nine (9) square feet. Building permit applications shall be accompanied by a site
24 plan and structural components data for the Residential Accessory Communication
25 Device, including details of anchoring. The Building Official shall approve the
26 plans before installation.
27
- 28 G. **Color/Content.** Residential Accessory Communication Devices shall be of a
29 neutral color and shall not be painted with scenes or contain letters or messages.
30
- 31 H. **Lightning Protection.** Each Residential Accessory Communication Device shall
32 be grounded to protect against natural lightning strikes in conformance with the
33 National Electrical Code as adopted by the City of Wayzata.
34
- 35 I. **Electrical Code.** Residential Accessory Communication Device electrical
36 equipment and connections shall be designed and installed in conformance with the
37 National Electrical Code as adopted by the City of Wayzata.
38
- 39 J. **Effective Date.** The provisions of this Section shall be applicable to all
40 communication reception/transmission devices erected after _____, 2015.
41 All such structures existing prior to this date shall be addressed as legal non-
42 conforming uses.
43
- 44 K. **Conditional Use Permit.** Residential Accessory Communication Devices not
45 qualifying as a permitted accessory use may be considered and approved through
46 conditional use standards established by Section 801.04 of this Ordinance.

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Draft 10/19/2015

SECTION 31
COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL
ACCESSORY COMMUNICATIONS DEVICES

Section 801.31:

- 801.31.1: Purpose and Intent
- 801.31.2: Definitions
- 801.31.3: Permit Required for Telecommunication Facilities
- 801.31.4: Building and Design Standards for Telecommunication Facilities
- 801.31.5: General Standards for Telecommunication Facilities
- 801.31.6: Applications for Telecommunication Facilities Permit
- 801.31.7: Review of Permit Applications
- 801.31.8: Appeals
- 801.31.9: Revocation of Permit
- 801.31.10: No Recourse Against the City
- 801.31.11: Indemnification
- 801.31.12: Severability
- 801.31.13: Residential Accessory Uses

1. Purpose and Intent.

The purpose of this section is to establish objective and balanced regulations for the siting, screening and operation of wireless telecommunication facilities and equipment in order to accommodate Wireless Communication systems within the City while minimizing any adverse impacts on the City's natural resources, aesthetics, public spaces, surrounding neighborhood property values, and the general health, safety and public welfare, all as allowed under applicable Federal law. This section recognizes that these wireless communication systems provide a valuable service to the public but that they are not a public utility. The specific purposes of this section are to:

- A. Specify allowed locations of commercial Telecommunication Facilities and Towers in the City;
- B. Protect residential, recreational and park areas from encroachment by commercial operations, including, but not limited to, Telecommunication Facilities and Towers;
- C. Minimize adverse visual impacts of Telecommunication Facilities and Towers through careful design, optimum siting, appropriate landscaping, innovative camouflaging techniques and stealth poles;
- D. Require, where possible, the co-location of Telecommunications Towers and Antennas support structures on Towers or existing structures as a primary option rather than construction of multiple single-use Towers;

- 1 E. Require utilization of technological designs that either eliminate or reduce the need for
2 erection of new Tower structures to support Telecommunications Facilities;
3
4 F. Minimize potential damage to property caused by Telecommunication Facilities and
5 Towers by ensuring such structures are soundly and carefully designed, constructed,
6 modified, maintained, and removed when no longer used or are determined to be
7 structurally unsound;
8
9 G. Ensure that Telecommunication Facilities and Towers are compatible with surrounding
10 land uses;
11
12 H. Provide development standards for Wireless Telecommunication Facilities that are
13 consistent with the requirements of the Federal Telecommunications Act of 1996, as
14 amended, or other applicable Federal, State and local laws, statutes, ordinances and
15 regulations.
16

17 **2. Definitions.**
18

19 For the purposes of this section, the terms below have the meaning given to them, unless the
20 context clearly indicates a different meaning:
21

- 22 A. **"Accessory Equipment"** means the wires, cables, generators, air conditioning units, and
23 other equipment or facilities that are used in conjunction with Telecommunication
24 Facilities and Telecommunication Equipment
25
26 B. **"Applicant"** means any person or entity who files an application for any permit or is
27 party to any lease agreement required by this Ordinance for the construction,
28 replacement, installation, or alteration of wireless communication facility or any
29 component thereof.
30
31 C. **"Antenna"** means any exterior transmitting or receiving device mounted on a Tower,
32 Monopole, building, or other structure and used in communications that radiate or
33 capture electromagnetic waves, digital signals, analog signals, radio frequencies
34 (excluding radar signals), wireless telecommunications signals or other communications
35 signals. "Antenna" does not include a lightning rod.
36
37 D. **"Antenna Support Structure"** means any new or existing Tower, building, water tower,
38 or electric transmission tower carrying over 200 kilo volts of electricity that can be used
39 for the location of Antennas without increasing the height or mass of the existing
40 structure.
41
42 E. **"Engineer"** means a radio, electrical, structural, or mechanical engineer licensed by the
43 State of Minnesota.
44
45 F. **"Equipment Shelter"** means an enclosed structure at the base of or near a
46 Telecommunication Facility, Tower, or Antenna within which are housed, among other

things, batteries, generators, air conditioning units, wireless communications or electrical equipment, or other Accessory Equipment, which may be connected to the Telecommunications Facility, Tower or Antenna by cable.

G. **“Co-location”** means the sharing of structures by two or more wireless service providers on a single support structure or otherwise sharing a common location.

H. **“Monopole”** means a slender self-supporting Tower used to support Antennas and Accessory Equipment.

I. **“Permit Holder”** a person or entity who holds a permit issued pursuant to this Ordinance for a Telecommunications Facility.

J. **“Public Utility Structure”** means a structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications.

K. **“Residential Accessory Communication Devices”** means any satellite dishes, television Antennas, radio Antennas, amateur (ham) radio Antennas, and similar communication transmission/reception devices and associated Accessory Equipment that are a permitted accessory use within a residential district.

L. **“Stealth Design”** means state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include architecturally screening roof-mounted Antennas and Accessory Equipment; integrating Telecommunications Facilities into architectural elements; nestling Telecommunications Facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the Telecommunications Facilities; and designing Towers to appear other than as Towers, such as light poles, power poles, flag poles, and trees.

M. **“Telecommunications Equipment”** means Antennas, Accessory Equipment, or Towers.

N. **“Telecommunications Facilities”** means any facility or location maintained by a commercial enterprise where Telecommunications Equipment is located.

The following shall not be considered Telecommunication Facilities:

- i. Licensed amateur (ham) radio Antennas, regulated under subsection 801.31.13 below.
- ii. Television Antennas and satellite dish Antennas for reception within individual homes or businesses, regulated under subsection 801.31.13 below.
- iii. Temporary Telecommunication Facilities placed in service during an emergency declared by a government agency or for special events requiring wireless

1 service capacity or coverage that is not available from existing
2 Telecommunication Facilities.

3
4
5 O. **“Tower”** means any of the following: a ground or roof mounted pole; spire; free
6 standing, self-supporting lattice or monopole structure; or combination thereof taller than
7 ~~twenty-five~~^{fifteen} (245) feet, including but not limited to supporting lines, cables, wires,
8 braces, and masts, intended primarily for the purpose of mounting an Antenna,
9 meteorological device, or similar apparatus above grade (except amateur radio
10 Antennas).

11
12 P. **“Wireless Communications”** means any personal wireless services as defined in the
13 Federal Communications Act of 1996, including FCC licensed commercial wireless
14 Telecommunications services including, but not limited to, cellular, personal
15 communication services (PCS), specialized mobile radio (SMR), enhanced specialized
16 mobile radio (ESMR), global system of mobile communication (GSM), paging and
17 similar services that currently exist or may be developed.

18
19 **3. Permit Required for Telecommunication Facilities.**

20
21 In addition to any Conditional Use Permit that may be required below, prior to the
22 construction or operation of a Telecommunications Facility, the owner and operator of
23 the Telecommunications Facility must obtain a permit for the proposed
24 Telecommunications Facility according to the provisions of this Ordinance, termed a
25 “Telecommunication Facilities Permit”.
26

27 **4. Building and Design Standards and Allowed Locations for Telecommunications**
28 **Facilities.** All Telecommunications Facilities shall be constructed and maintained in
29 accordance with the following standards:
30

31 **A. Existing Telecommunication Facilities.**

32
33 Existing Telecommunications Facilities located on or attached to existing
34 structures, prior to the adoption of this Ordinance, are regulated by the provisions
35 of the zoning district for each such parcel containing said structure. Once the
36 leases for existing Telecommunication Facilities expire or are otherwise
37 terminated, the owner of the Telecommunication Facilities shall apply for a
38 Telecommunication Facilities Permit under this Ordinance and those existing
39 Telecommunications Facilities shall be required to conform to all requirements of
40 this Ordinance for new Telecommunication Facilities. The City may, among
41 other remedies, require relocation of equipment, at the Telecommunication
42 Facilities expense, to permitted areas under this Ordinance. ~~Notwithstanding the~~
43 ~~above, nothing in this Section 4 shall be read to allow the City to prohibit a~~
44 ~~Telecommunication Facilities Permit based solely upon a request by the~~
45 ~~owner/operator for modification of an existing tower or base station that does not~~
46 ~~substantially change the physical dimensions of such tower or base station and is~~

~~otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (e), as the same may be amended.~~

B. New Telecommunications Facilities.

- i. New Telecommunications Towers shall be located only on the following parcels owned and/or controlled by the City of Wayzata, unless applicant obtains a Conditional Use Permit as further described below (in addition to the Telecommunication Facilities Permit required under subsection 3 above), with the exact location on such parcels determined at the sole discretion of the Wayzata City Council:

<u>Property Name</u>	<u>Property Identification Number</u>
City of Wayzata Public Works Facility	01-117-23-22-0004
Wayzata West Middle School	06-117-22-22-0008

- ii. Antennas shall be located on a new or replacement Tower at the locations permitted for Telecommunications Facilities only if the Applicant complies with the following requirements, in additions to the other requirements of this Ordinance:
- a) The Applicant shall provide documentation and/or an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Antennas is necessary to meet the coverage and capacity needs of its system. The Applicant shall provide a network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits. The analysis shall also show the Antennas would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also pay the reasonable expenses of a radio or electrical engineer retained by the City, at the City's option, to review this analysis;
- b) The new or replacement Telecommunications Facilities shall use as many Stealth Design techniques as reasonably possible and include non-proprietary information on stealth design technology. Economic considerations or hardships shall not be the sole justification for failing to provide Stealth Design techniques.
- c) The new or replacement Tower and Antenna, including attachments other than lightning rods, shall not exceed 150 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height up to 190 feet if the Council finds the increase in height would not have a significant visual impact, would not have a negative property value impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The City Council may waive this height limitation for a Tower and/or

1 Antenna if used wholly or partially for essential public services, such as
2 public safety.

3
4 iii. A new Antenna may be attached to an existing public utility structure
5 within a right of way if:

6
7 a) The Antenna does not extend more than fifteen (15) feet above the top of
8 the existing utility structure.

9
10 b) The Antenna is no larger than three (3) cubic feet and has no individual
11 surface larger than four (4) feet.

12
13 c) The Antenna extends outward from the utility structure no more than three
14 (3) feet.

15
16 d) There is no ground mounted equipment so long as the existing public
17 utility structure is available for the mounting of such equipment.

18
19 e) There is no interference with public safety communications or with the
20 original use of the public utility structure.

21
22 f) The Applicant agrees that the Antenna must be removed and relocated, at
23 Applicant's expense, if the road authority requires the removal and
24 relocation of the public utility structure.

25
26 iv. New Antenna may be attached to an existing building if:

27
28 a) the Applicant provides an analysis prepared by a radio or electrical
29 engineer demonstrating the proposed location is necessary to meet the
30 coverage and capacity needs of Applicant's. The analysis shall show a
31 network map describing all of the Applicant's Telecommunications
32 Facilities providing coverage within the City's limits and confirm the
33 proposed Antennas would not cause interference with other existing or
34 approved Telecommunications Equipment. The Applicant shall also pay
35 the reasonable expenses of an expert retained by the City, at the City's
36 option, to review this analysis;

37 b) the new Antenna and the associated Accessory Equipment use as many
38 Stealth Design techniques as reasonably possible. Economic
39 considerations or hardships shall not be the sole justification for failing to
40 provide Stealth Design techniques;

41
42 c) the building upon which the Antenna is to be located is located on a parcel
43 of land zoned C – 1 Office and Limited Commercial District, C-3 Service

District or PUD Planned Unit Development;

- d) the building upon which the Antenna is to be located is within 300 feet of the Wayzata Blvd E right-of-way;
- e) the Antenna is attached to the façade of the building or ~~to attached on or within the~~ rooftop ~~parapet~~ screening wall (i.e. §801.09.7.2). A façade mounted Antenna shall not extend above the cornice line and a rooftop ~~or screening wall~~ ~~parapet~~ mounted Antenna shall not extend more than fifteen (15) feet above the ~~screening~~ ~~parapet~~ wall. Façade and ~~screening~~ ~~parapet~~ wall mounted Antenna shall as closely as possible match the color of the underlying building material.
- f) Accessory Equipment shall be housed within an existing structure or within rooftop parapet screening walls whenever possible. If a new equipment building is necessary, it shall be situated to the rear or side of the principal use and shall be screened from view by landscaping where appropriate. If a new equipment building is necessary, the building shall be constructed of materials and color scheme compatible with the principal building.

C. **Conditional Use Permits.**

- i. Telecommunication Facilities may not be located on any sites other than those that are designated in Section 801.31.4.B unless the Applicant first obtains a Conditional Use Permit for the location. Such a Conditional Use Permit may be approved provided all of the following are met:
 - a) The requirements of Section 801.04 have been considered and satisfactorily met.
 - b) Antennas attached to an existing building do not extend more than fifteen (15) feet above the highest point of the building.
 - c) The Applicant provides documentation and/or an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Telecommunication Facility is necessary to meet the coverage and capacity needs of its system. The documentation and/or analysis must also show the Telecommunication Facilities would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also provide a network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits. The Applicant must also pay the reasonable

1 expenses of a radio or electrical engineer retained by the City, at the City's
2 option, to review this analysis.

3
4 d) The new or replacement Telecommunications Facilities must use as many
5 Stealth Design techniques as reasonably possible. Economic
6 considerations alone are not justification for failing to provide Stealth
7 Design techniques.

8
9 e) New or replacement Tower and/or Antennas must comply with the
10 provisions of Section 801.31.5 below.

11
12 ii. The City shall have the following priority ranking of land uses (as defined in
13 the City of Wayzata Comprehensive Plan) suitable for potential new or
14 replacement Telecommunication Facilities when considering a Conditional
15 Use Permit application, with (a) being the highest priority and (d) being the
16 lowest priority:

- 17 a) City Owned Property that is adjacent to highway rights of way and
18 not adjacent to or adjoining residential property.
19 b) Institutional/Public Property that is not adjacent to or adjoining
20 residential property.
21 c) Semi-Public/Private Property that is not adjacent to or adjoining
22 residential property.
23 d) Mixed Use Commercial or Service Commercial properties that are
24 not adjacent to or adjoining residential property.
25

26 If the proposed site is not the highest priority listed above, then a detailed
27 explanation shall be provided as to why a site of a higher priority was not
28 selected. The explanations shall include the reason or reasons why such a
29 Conditional Use Permit should be granted for the proposed site and a
30 description of the hardship that would be incurred by the Applicant if the
31 permit were not granted for the proposed site.

32
33 iii. CUPs for new or replacement Telecommunication Facilities shall be
34 prohibited in the following land use categories, as defined in the City of
35 Wayzata Comprehensive Plan:

- 36 a) Parcels guided and utilized for residential purposes, including
37 single family and multiple family.
38 b) Parcels guided and utilized for Park or Public Open Spaces
39 c) Parcels guided and utilized for Central Business District, Mixed
40 Use Residential, or Downtown Mixed Use District.

41 42 D. Eligible Facilities Request

43
44 Notwithstanding the above, nothing in this Section 4 shall be read to allow the
45 City to prohibit a Telecommunication Facilities Permit based solely upon a
46 request by the owner/operator for modification of an existing tower or base station

that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended.

5. General Standards for Telecommunication Facilities.

All Telecommunications Facilities must comply with the following standards (although nothing in this Section 5 shall be read to allow the City to prohibit a Telecommunication Facilities Permit based solely upon a request by the owner/operator for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended.) :

- A. **Vertical projection on Antenna support structures.** Antennas mounted on an existing Antenna support structure shall not extend more than 15 feet above the height of the structure to which they are attached. Wall or façade-mounted Antennas shall not extend above the cornice line and shall be constructed of a material or color that matches the exterior of the building.
- B. **Horizontal projection.** Antennas shall not project out from the side of the existing Antenna support structure, Tower or wall or facade by more than three feet.
- C. **Fall Zone Analysis.** The Applicant must submit a fall zone analysis report completed by a qualified and licensed engineer who shows the Telecommunications Facilities do not pose a threat to general health, safety and welfare of the City.
- D. **Setbacks.** A new Tower shall meet the building setback that is established for the district where it is to be located and the following additional standards:
 - i. The Tower shall be setback from all residential property lines at least one (1) foot for each foot in height, but shall have a minimum setback of at least one hundred (100) feet. The Tower setbacks may be increased by the City Council dependent on the results of the engineered fall zone analysis report submitted by the Applicant as part of the permit application.
 - ii. Towers and Telecommunications Facilities shall not encroach upon any easements unless written permission is obtained from the underlying property owner burdened by the easement and the beneficiary of the easement.
 - iii. The required setbacks may be reduced or the location in relation to a public street modified, at the sole discretion of the City Council, when the

Telecommunications Facility is integrated into an existing or proposed structure such as a building, light or utility pole.

- E. **Height.** The height of an Antenna and/or Tower shall be the minimum necessary to meet the Applicant's coverage and capacity needs, as verified by an electrical engineer or other appropriate professional. Any new or replacement Tower and Antenna, including attachments other than lightning rods, shall not exceed 150 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height up to 190 feet if the Council finds: (i) the increase in height would not have a significant visual impact, (ii) would not have a negative property value impact on surrounding properties because of proximity, topography or screening by trees or buildings or (iii) would accommodate two or more users.
- F. **Exterior surfaces.** Towers and Antennas shall be painted a non-contrasting color consistent with the surrounding area such as: blue, gray, green, brown, or silver, or have a galvanized finish to reduce visual impact. Metal Towers shall be constructed of, or treated with, corrosion-resistant material.
- G. **Underground Equipment Storage.** If commercially reasonable, Accessory Equipment and/or equipment storage facilities shall be designed to be placed and be built underground adjacent to the Telecommunications Facility. If such underground placement is not commercially reasonable, then such Accessory Equipment and/or equipment storage facility shall be allowed to be placed above-ground, subject to the restrictions of this Ordinance, including, but not limited to screening of existing equipment.
- H. **Ground-mounted equipment.** If deemed commercially unreasonable for the Accessory Equipment and/or equipment storage facilities to be located underground, the ground-mounted Accessory Equipment and/or equipment storage facilities shall be architecturally designed to blend in with the surrounding environment, including the principal structure and/or shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and compliments the character of the surrounding neighborhood. No more than one Equipment Shelter or accessory building is permitted for each Tower. Equipment Shelters or accessory buildings shall be designed to accommodate additional space needed for the co-location of additional Antennas at the site. The additional space must either be built within the first shelter/building or that shelter/building must be designed to allow for future expansions and/or additions. Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review by City Staff, Planning Commission, and City Council, and any applicable Design Standards criteria under Section 801.09 of the Wayzata Zoning Ordinance. The Applicant shall be responsible for maintaining the structure in a high-quality condition. If the Applicant abandons or vacates the structure, it shall be forfeited to the City or torn down by the Applicant at their expense, at the discretion of the City Council.

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- I. **Construction.** Telecommunications Facilities shall be in compliance with all buildings and electrical code requirements. All applicable federal, state and local agency licenses and/or permits shall be obtained. A Tower shall be designed and certified by a licensed structural engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the Telecommunications Facilities shall be in compliance with the manufacturer's specifications. If, upon inspection, the City concludes that a Tower or other portion of a Telecommunications 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 of the Telecommunication Facility or Tower, the owner shall have thirty (30) days to bring such Tower or Telecommunication Facility into compliance with such standards. Failure to bring such Tower or Telecommunication Facility into compliance with such thirty-day period shall constitute grounds for the removal of the Tower or Telecommunication Facility at the owner's expense.
- J. **Interference with Public Safety Telecommunications.** No Tower or Telecommunications Facility shall interfere with public safety Telecommunications. All Towers and Telecommunication Facilities shall comply with FCC regulations and licensing requirements.
- K. **Security Fencing and Screening.** Telecommunication Facilities and Towers shall be enclosed by security fencing not less than the height of the equipment located therein and shall also be equipped with an appropriate anti-climbing device. Fencing within one hundred (100) feet of a residential or parking property shall be constructed of a well-designed fence of wood or other environmentally sound material, and be compatible with the surrounding character of the area. The Telecommunication Facilities and Towers shall also include a landscape screen, at least six (6) in height, around the perimeter of equipment area, as approved by the City Council.
- L. **Other Protections.** The City may require shields to protect from ice falling from Towers, anti-climbing devices to prevent unauthorized persons from climbing Towers, or other appurtenances necessary to protect life and property.
- M. **Noise.** If the proposed Telecommunications Facility includes equipment that causes significant sound levels, sound buffers may be required including but not limited to, baffling, barriers, enclosures, walls and plantings. The Applicant shall submit an acoustical analysis (measured to the property line) and report prepared by a licensed and/or accredited sound engineer certifying that the noise to be generated from the proposed Telecommunication Facility shall not impact adjacent properties. Said report shall include, without limitation, a written description of all noise generated by the Facility, including retractable monopole motors, Antenna rotators, power generation, heating or air conditioning, and related equipment, and shall include the estimated times, frequency, duration and

1 decibel levels of the noise. All equipment shall conform to Minnesota Pollution
2 Control Agency decibel standards.

3
4 N. **Sensitive Habitats.** No Telecommunication Facility shall be located in
5 environmentally sensitive habitats, including but not limited to wetlands,
6 shorelines, established animal habitats, conservation districts, and significant tree
7 groups, unless mitigation measures can be adopted which would reduce potential
8 impacts to levels of non-significance.

9
10 O. **Radio Frequency Emissions.** Telecommunications Facilities shall comply with
11 Federal Communication Commission standards for radio frequency emissions and
12 interference.

13
14 P. **Interference.** No Telecommunication Facility shall be permitted that causes
15 interference with commercial or private use and enjoyment of other legally
16 operating telecommunications devices including, but not limited to, radios,
17 televisions, personal computers, telephones, personal communications devices,
18 garage door openers, security systems, and other electronic equipment and
19 devices in violation of any Federal Communication Commission standards
20 relating to radio frequency interference. Unless otherwise prohibited by Federal
21 Communication Commission standards, an Applicant shall furnish a state
22 registered engineer's certification that no such interference shall occur, or identify
23 what interference may occur and how the Applicant shall mitigate any potential
24 interference that may occur.

25
26 Q. **Risk of Danger.** Telecommunications Facilities and Towers shall not pose a risk
27 of explosion, fire, or other danger due to its proximity to volatile, flammable,
28 explosive or hazardous materials. Telecommunication Facilities, Towers,
29 Antennas, and Accessory Equipment shall be subject to state and federal
30 regulations pertaining to non-ionizing radiation and other health hazards related to
31 such Facilities. If new, more restrictive standards are adopted, the Facilities shall
32 be made to comply or continued operations may be restricted by the City Council.
33 The cost of verification of compliance shall be borne by the Applicant.

34
35 R. **Maintenance.** All Telecommunication Facilities and Towers shall at all times (i)
36 be kept and maintained in good condition, order and repair so that the same shall
37 not menace or endanger the life or property of any person, and (ii) allow sufficient
38 access for service vehicles and personnel. Maintenance of equipment shall be
39 scheduled for between 7:00am-6:00pm, Monday through Friday, unless in case of
40 emergency or otherwise agreed to by the City. Service vehicles for equipment
41 maintenance shall be parked on city streets, ~~whenever possible~~ unless paved and
42 screened off-street is available at the site. In the case of maintenance of
43 Telecommunication Facilities on the City Water Tower, service vehicles shall
44 park on the service entrance of the City Water Treatment Plant, whenever
45 possible.
46

- 1 S. **Co-location opportunity.** The Applicant, the Tower owner, the landowner,
2 and their successors and assigns shall allow the shared use of the Tower if an
3 additional user agrees in writing to meet reasonable terms and conditions for
4 shared use, shall submit a dispute over the potential terms and conditions to
5 binding arbitration, and shall sign the Conditional Use Permit agreeing to these
6 requirements. The City Council may waive these co-location requirements if
7 necessary to implement stealth design.
8
9 i. All Telecommunications Facility providers shall cooperate with each other
10 in co-locating Telecommunication Facilities and shall exercise good faith
11 in co-locating with other licensed carriers and in the sharing of sites,
12 including the sharing of technical information necessary to evaluate the
13 feasibility of collocation. In the event a dispute arises as to a co-location
14 issue, the City may require a third-party technical study to evaluate the
15 feasibility of co-locating at the expense of each wireless
16 telecommunications providers involved in the third-party study;
17
18 ii. All proposed new Towers shall be designed to accommodate both the
19 Applicant's Antennas and Antennas for as many other licensed carriers as
20 can be technically located thereon, but not less than one additional;
21
22 iii. All new Towers and Facilities owned by a telecommunications provider
23 shall be made available for use by the owner or initial user thereof,
24 together with as many other licensed carriers as can be technically located
25 thereon, but not less than one additional;
26
27 iv. All proposed new Towers shall be designed to allow for future
28 rearrangement of Antennas or Tower modifications, and to accept
29 Antennas mounted at varying heights unless the City otherwise agrees in
30 order to accommodate Stealth Design techniques;
31
32 T. **Successors and Assigns.** Any Permit or lease for a Telecommunications
33 Facility shall run with the Property, and shall be binding upon and inure to the
34 benefit of the parties, their respective successors, personal representatives, and
35 assigns.
36
37 U. **External messages.** No advertising message or identification signs, other than
38 warning or equipment information signs as legally required, shall be affixed to the
39 Telecommunications Facilities.
40
41 V. **Lighting.** Telecommunications Facilities or Towers shall not be artificially
42 illuminated unless required by law or by a governmental agency to protect the
43 public's health and safety or unless necessary to facilitate service to ground-
44 mounted equipment. Any lighting or artificial illumination utilized shall be
45 shielded and not cast glare onto adjacent properties. All lighting shall be
46 measured to the property line.

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- W. **On-site employees.** There shall be no employees on the site at a Telecommunications Facility on a permanent basis. Occasional or temporary repair and service activities are allowed.
- X. **Advances in Stealth Technology.** Whenever an applicant proposes to install and/or replace antennas or other telecommunications equipment, the Applicant shall submit a report describing all available technology for installation or replacement. The report shall include the purpose of equipment to be installed (expand coverage, expand capacity, expand bandwidth, etc.) and the performance specifications and physical dimensions of the equipment. The report conclusions must provide an analysis of performance versus visual impacts and/or stealth technology. The City retains the right to evaluate the reports analysis and perform a third party technical review at the applicants cost. The City shall have the ability to require the stealth or lower visual profile equipment based on the third party technical recommendation. All Applicants/Permit Holders shall use and apply any readily available advances in technology that lessen the negative aesthetic effects of Telecommunication Facilities and Towers to the residential communities within the City. The City may review existing structures and compare the visual impact with available technologies in the industry for the purpose of removal, relocation or alteration of these structures in keeping with the general intent of this Ordinance. Such removal, relocation or alteration may be required by the City pursuant to its zoning power and authority.
- Y. **Removal.** After one hundred twentythree (12030) days' notice from the City to the Permit Holder all Telecommunications Facilities, Antennas, or Towers shall be required to be removed at the Permit Holder's expense, if such improvement is found to be in violation of any portion of this Ordinance by the City and such violation is not cured within such thirty day time period. Obsolete or unused Telecommunications Facilities and all related equipment shall be removed within six (6) months after cessation of their use at the site, unless an exemption is granted by the City Council. Telecommunications Facilities and related equipment that have become hazardous shall be removed or made not hazardous within 30 days after written notice to the current Permit Holder and to any separate landowner, unless an exemption is granted by the City Council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and to the taxpayer of the property listed in the Hennepin County tax records. Telecommunications Facilities and all related equipment that are not removed within this time are declared to be public nuisances and may be removed by the City. The City may assess its costs of removal against the Property.
- Z. **No Recourse Against the City.** Every permit shall provide that, without limiting such immunities as the City or other persons may have under applicable law, an Applicant/Permit Holder shall have no monetary recourse whatsoever against the City or its elected officials, boards, commissions, agents, employees or volunteers

1 for any loss, costs, expense or damage arising out of any provision or requirement
2 of this Ordinance or because of the enforcement or lack of enforcement of this
3 Ordinance or the City's exercise of its authority pursuant to this Ordinance, a
4 permit, a lease, or other applicable law, unless the same shall be caused by
5 criminal acts or by willful gross negligence. Nothing herein shall be construed as
6 a waiver of sovereign immunity.
7

8 **6. Applications for Telecommunications Facilities Permit.**
9

10 Permit Application. An application for a permit for a modification of an existing tower
11 or base station that does not substantially change the physical dimensions of such tower
12 or base station shall include information sufficient to demonstrate that the modification
13 meets the standards set forth in 47 C.F.R. Section 1.40001.
14

15 For all other Telecommunications Facilities Permit applications, the following
16 requirements apply. In addition to an Applicant's name, address, certificate of survey,
17 grading and landscaping plans, and other such similar information, an application for a
18 permit under this Section shall include the following:
19

- 20 A. A scaled site plan clearly indicating the location, type and height of the proposed
21 Telecommunication Facility, Tower, or Antenna, on-site land uses and zoning,
22 adjacent land uses and zoning, adjacent roadways, proposed means of access,
23 setbacks from property lines, elevation drawings of the proposed equipment and
24 any structures, topography, parking and any other information deemed by the City
25 Staff to be necessary to assess compliance with this Section.
26
- 27 B. A visual simulation of the proposed Telecommunication Facility Tower or
28 Antenna. Visual simulation shall consist of either a physical mock-up of the
29 Telecommunication Facility Tower or Antenna, balloon simulation, computer
30 simulation, photo simulation, or other similar simulation. In instances where the
31 proposed Telecommunications Facility Tower or Antenna is located near a
32 residential area, photo simulations shall be submitted of the proposed
33 Telecommunication Facility Tower or Antenna from the nearest residential
34 neighbors unless the owners of such residential property refuse to allow the
35 required photo to be taken.
36
- 37 C. A report from a qualified and licensed professional engineer which:
38 i. Demonstrates that the Telecommunication Facility, Tower, Antenna
39 and/or Accessory Equipment comply with the structural and electrical
40 standards of this Section.
41 ii. Describes the Tower height, if utilized.
42 iii. Documents the height above grade for all potential mounting positions for
43 co-locating Antennas and the minimum separation distance between
44 Antennas.
45 iv. Describes the Tower's capacity, if utilized, including the number and type
46 of Antennas it can accommodate.

- 1 v. A network map describing all of the Applicant's Telecommunications
2 Facilities which provide any coverage within the City's limits.
3 vi. Documents what steps the Applicant shall take to avoid interference with
4 established public safety Telecommunications.
5 vii. Includes an engineer's stamp and registration number.
6
7 D. A written statement acknowledging that failure to comply with this Section and
8 the conditions of permit approval shall result in the revocation of the permit and
9 removal of the Telecommunications Facility, Antenna, and/or Tower;
10
11 E. Documentation that the Applicant has applied for and/or obtained any licenses
12 and/or approvals that are required by federal and state agencies.
13
14 F. A written statement indicating that the expenses incurred by the City to review
15 and process the application, and to enforce the provisions of the permit shall be
16 reimbursed by the Applicant.
17
18 G. A written statement which requires the Applicant to utilize the procedures
19 established by the Federal Communications Commission to resolve any
20 complaints received relating to interference allegedly caused by the
21 Telecommunications Facility, Antenna, and/or Tower.
22
23 H. A written statement indicating that the Applicant shall cooperate in good faith and
24 fair dealing in co-locating Telecommunications Facilities, Antenna and/or
25 Towers.
26
27 I. A written statement indicating that the Telecommunications Facility, Antenna,
28 and/or Tower shall be maintained in good and safe condition and its original
29 appearance and concealment, disguise or camouflage elements incorporated into
30 the design at the time of approval shall be preserved. Such maintenance shall
31 include, but not be limited to, painting, repair of equipment, and maintenance of
32 landscaping.
33
34 J. A written statement authorizing the City to conduct periodic inspections to
35 determine that the Telecommunications Equipment complies with the provisions
36 of this Section, any conditions of approval and all safety and building codes and
37 permits issued. This statement shall give the City the right to conduct such
38 inspections at any time upon a reasonable notice of five (5) business days to the
39 Applicant, and that all expenses related to such inspections shall be borne by the
40 Applicant.
41
42 K. A written statement indicating that the Applicant understands that
43 Telecommunications Facilities, Antennas, and/or Towers which have not been
44 used for six (6) months shall be deemed abandoned, and shall be removed
45 pursuant to this Section.
46

L. A written statement requiring the Applicant or current Permit Holder to notify the City that the Telecommunications Facility, Antenna, and/or Tower continue to be in operation. The notice of continuing operation shall be sent to the City Manager annually by certified mail within the last two (2) weeks of the month of December. The City shall provide written notice of failure to provide the required statement with a requirement that such statement be provided within 14 days from the date of such notice.

7. Review of Permit Applications.

The City shall process all applications for Telecommunication Facilities Permits in a timely manner and in accordance with established procedures and City Code.

8. Appeals.

At any time within thirty (30) days after a written order, requirement, determination or final decision has been made by the Zoning Administrator or other official interpreting or applying this Section, except for actions taken in connection with prosecutions for violations thereof, the Applicant or any other person affected by such action may appeal the decision in accordance with the provisions of the Zoning Ordinance.

9. Revocation of Permit.

A material breach of any terms and conditions of a permit issued for a Telecommunication Facility under this Section and the Zoning Ordinance may result in the revocation of the permit by the City. Penalties for a violation of a permit or this Section may include fines and removal of the Telecommunication Facility, Tower, or Antenna at the Applicant's/Permit Holder's expense.

10. No Recourse Against the City.

Every application for and issued permit shall provide a written acknowledgement, agreement and release from the Applicant and Permit Holder that, without limiting such immunities as the City or other persons may have under applicable law, an Applicant and Permit Holder shall have no monetary recourse whatsoever against the City or its elected officials, boards, commissions, agents, employees or volunteers for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement or lack of enforcement of this Ordinance or the City's exercise of or failure to exercise its authority pursuant to this Ordinance, a permit, a lease, or other applicable law, unless the same shall be caused by criminal acts or by gross negligence. Nothing herein shall be construed as a waiver of sovereign immunity.

11. Indemnification.

Each permit issued pursuant to this Section shall have as a condition of the permit, a requirement that the Applicant indemnify and hold harmless the City and its officers, agents, and employees from actions or claims of any description brought on account of any injury or damages sustained by any person or property resulting from the issuance of the permit and conduct of the activities authorized under said permit.

12. Severability.

If any section, subsection, sentence, clause or phrase of this Section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Section. The City Council hereby declares that it would have passed this Section and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid.

13. Residential Accessory Uses.

Residential Accessory Communication Devices are a permitted accessory use within residential districts provided they meet the following conditions:

- A. **Use.** They are for use by residents upon whose property the Residential Accessory Communication Devices are located.
- B. **Height.** A ground mounted Residential Accessory Communication Device height shall not exceed fifteen (15) feet unless approved as a Conditional Use Permit by the City Council.
- C. **Yards.** The Residential Accessory Communication Device shall not be located within the required front yard setback, a required side yard or any side yard abutting a street. Communication devices shall be located five (5) feet or more from rear lot lines and shall not be located within a utility easement.
- D. **Roofs.** The Residential Accessory Communication Device may be placed on the roof of any authorized structure on the premises. The height of the Residential Accessory Communication Device shall not exceed six and one-half (6-1/2) feet above the peak of the roof, unless approved by a Conditional Use Permit by the City Council.
- E. **Neighboring Property Impact.** In cases where no building permit is required, the Residential Accessory Communication Device shall be so located that in the event it falls, it shall not fall on adjoining property.
- F. **Building Permits.** A building permit shall be required for the installation of any Residential Accessory Communication Device which requires a Conditional Use Permit, or for any device which has a structural surface exposure of greater than nine (9) square feet. Building permit applications shall be accompanied by a site

1 plan and structural components data for the Residential Accessory
2 Communication Device, including details of anchoring. The Building Official
3 shall approve the plans before installation.
4

5 G. **Color/Content.** Residential Accessory Communication Devices shall be of a
6 neutral color and shall not be painted with scenes or contain letters or messages.
7

8 H. **Lightning Protection.** Each Residential Accessory Communication Device shall
9 be grounded to protect against natural lightning strikes in conformance with the
10 National Electrical Code as adopted by the City of Wayzata.
11

12 I. **Electrical Code.** Residential Accessory Communication Device electrical
13 equipment and connections shall be designed and installed in conformance with
14 the National Electrical Code as adopted by the City of Wayzata.
15

16 J. **Effective Date.** The provisions of this Section shall be applicable to all
17 communication reception/transmission devices erected after _____, 2015.
18 All such structures existing prior to this date shall be addressed as legal non-
19 conforming uses.
20

21 K. **Conditional Use Permit.** Residential Accessory Communication Devices not
22 qualifying as a permitted accessory use may be considered and approved through
23 conditional use standards established by Section 801.04 of this Ordinance.
24

25 000043-204032/2211839_2
26

October 1, 2015

SENT VIA E-MAIL ONLY

Wayzata City Council and Planning Commission
Attn: David Dudinsky, Dir. of Public Service
City of Wayzata
299 Wayzata Blvd. W.
Wayzata, MN 55391

Re: Proposed Amendments to City of Wayzata Zoning Ordinance
Related to Commercial Telecommunications Facilities
Verizon Wireless Comments

To the Wayzata City Council and Planning Commission:

As we mentioned in our prior comments related to the proposed relocation of the Verizon Wireless facilities from the City of Wayzata water tower, more than 40% of adults in the United States have only a wireless telephone, with no traditional landline telephone service at all.¹ In the Midwest, 46.9% of adults live in households with no wired phone. (***See*** U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, ***Wireless Substitution: State-level Estimates from the National Health Interview Survey***, January–June 2014 (December, 2014) at Table 2, p. 7 ***available at*** <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf>.)

The FCC considers enhanced reliability and resiliency of the wireless communications network a “major public safety priority” of the FCC due to the growing number of U.S. households that rely solely on wireless phones and because the great majority of 911 calls originate on wireless networks. ***See In the Matter of Improving the Resiliency of Mobile Wireless Communications Networks; Reliability and Continuity of Communications Network, Including Broadband Technologies***, FCC 13-125 at ¶18 (September 27, 2013)(“With an increasing percentage of 911 calls – already measured at 75 percent within the State of California – originating on wireless networks, the need for reliable wireless service during emergencies is a major public safety priority.”)

Recognizing this, many local zoning authorities now view their regulation of wireless infrastructure much differently from the way they did 10 or 20 years ago. Where cities once may have adopted a goal to preclude these facilities from residential areas, forward-thinking communities recognize that it would be irresponsible to do so now. Cellphones have become so commonplace that it is crucial for cities like Wayzata to adopt ordinances that encourage well-developed networks, so that these devices will work properly when they are needed most. This

***Verizon Wireless Comments on Proposed Amendments to
City of Wayzata Commercial Telecommunications Facilities Ordinance
October 1, 2015
Page 2 of 5***

is especially important when someone must use their cellphone to call 9-1-1 from inside their own home or workplace.

After all, these devices only work when there are operational cell sites with antennas in relatively close proximity to the wireless caller. This need for proximity is even more important when someone needs to use their phone from inside of a building – perhaps even the basement of their own home. Because these systems operate at relatively low power, it is very difficult for the signals to penetrate the walls of buildings where callers may be. We all know this to be true; as we go into our basements and lower levels of our homes, it is more difficult to make a call, or to keep a call connected once it is made.

Although common when this service was new, cellphone use is no longer limited to our cars. Certainly, police, fire and public safety personnel still use their devices when on the scene or traveling to it. But smartphones are just as likely to be used by the average citizen – to check for storms while fishing or boating, to read e-mail between innings during a little league game or even to get directions to the next hockey game. The antennas need to be wherever the people are, and the City's ordinance should be drafted to make this possible, even in residential areas.

Stealth designs can be used in many locations. If the City prefers that these installations go largely unnoticed by casual observers, the amendments should be drafted to accommodate cell sites that are camouflaged – so called stealth designs. This type of construction technique can make it possible for a cell site to be integrated into a church, school or other, higher density residential (apartment) building. In addition to rooftop installations, these facilities can be camouflaged as steeples, bell towers, crosses, chimneys, parking lot light standards, or other structures that fit with the character of the preexisting land use. For locations on rooftops, it can be possible to install antennas behind RF-transparent screen walls, when the original building design can accommodate the structure and increased snow load, of course.

For this reason, cell sites – as a category of land use – should not be limited to areas that are only zoned C-1, C-3 or PUD (Office and Limited Commercial District, Service District or Planned Unit Development, respectively), as set forth in the current draft of the ordinance. (*See* Section 801.31.4(B)(iv)(c), located on lines 6-8 of p.7 of the draft.) This is not to say that the City should allow cell sites on properties that are used for single family residences, or even low density, multifamily developments, such as twin homes. Therefore, Verizon Wireless recommends that the following provision be added to the end of Section 801.31.4(B)(iv)(c) be modified as follows:

- c) the building upon which the Antenna is to be located is not a single-family dwelling or twin home. ~~located on a parcel of land zoned C – 1 Office and Limited Commercial District, C-3 Service District or PUD Planned Unit Development~~

Since wireless facilities would still be subject to review under the City's Conditional Use Permit process, this revision would give flexibility, while still preserving land use control that the City has over all Conditional Use Permit applicants.

***Verizon Wireless Comments on Proposed Amendments to
City of Wayzata Commercial Telecommunications Facilities Ordinance
October 1, 2015
Page 3 of 5***

For similar reasons, limiting the design of cell sites to the requirement that antennas be mounted on the façade or parapet of a building is not necessary. To accommodate this type of design, the provisions of Section 801.31.4(B)(iv)(e) should be modified as follows:

- e) the Antenna is attached to the façade of the building, ~~or to the rooftop parapet screening wall or housed within rooftop screening walls whenever possible.~~ A façade mounted Antenna shall not extend above the cornice line and a rooftop ~~or parapet~~ mounted Antenna shall not extend more than fifteen (15) feet above the parapet wall. Façade and parapet wall mounted Antenna, ~~and all rooftop screening walls~~ shall as closely as possible match the color of the underlying building material.

In fact, this ability to approve well-designed facilities is likely the best way that the City can ensure that its citizens will have the wireless service that they expect – and deserve – while still controlling development of the facilities. However, one of the provisions of the ordinance amendments has the potential of requiring buildings to be built that are much larger (perhaps 3 times larger) than they need to be. (*See* Section 801.31.5(H).) That provision requires buildings or shelters to be built to accommodate multiple users. Depending on the existing use of a site, this might mean that a facility that could easily blend into the surroundings with a smaller structure might not blend so well if the structure is required to be larger.

To avoid this unintended consequence, Verizon Wireless suggests the following revisions to the second sentence of Section 801.31.5(H):

H. Ground-mounted equipment. If deemed ~~unfeasible by the City Council to be built~~ commercially unreasonable for the Accessory Equipment and/or equipment storage facilities to be located underground, ~~the~~ ground-mounted Accessory Equipment ~~or buildings and/or equipment storage facilities~~ shall be architecturally designed to blend in with the surrounding environment, including the principal structure; ~~and/or~~ shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and compliments the character of the surrounding neighborhood. No more than one Equipment Shelter or accessory building is permitted for each user of a Tower. Equipment Shelters or accessory buildings shall ~~may~~ be designed to accommodate additional space needed for the co-location of additional Antennas at the site, if reasonably necessary given the current land uses at the site, the design of the facility, the land space available and the applicable Conditional Use criteria. Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review by City Staff, Planning Commission, and City Council, and any applicable Design Standards criteria under Section 801.09 of the Wayzata Zoning Ordinance. The Applicant shall be responsible for maintaining the structure in a high-quality condition. If the Applicant abandons or vacates the structure, it shall be forfeited to the City or torn down by the Applicant at their expense, at the discretion of the City Council.

***Verizon Wireless Comments on Proposed Amendments to
City of Wayzata Commercial Telecommunications Facilities Ordinance
October 1, 2015
Page 4 of 5***

Some language only applies to City owned facilities. Finally, it seems apparent that Section 801.31.5(R) contains language that is leftover from the City's earlier ordinance, in which all cell sites were required to be on City property. That provision contains very specific limitations on access and maintenance of facilities (work only between 7:00 a.m. and 6 p.m. (except in cases of emergency)), as well as parking of maintenance vehicles being on city streets wherever possible. However, the owner of a business may prefer that work be performed outside of business hours, and that vehicles be parked in the parking lot, for example.

These issues can be handled with the following, further revisions to Section 801.31.5(R):

R. Maintenance. All Telecommunication Facilities and Towers shall at all times (i) be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any person, and (ii) allow sufficient access for service vehicles and personnel. On sites owned by the City, maintenance of equipment shall be scheduled for between 7:00am-6:00pm, Monday through Friday, unless in case of emergency or otherwise agreed to by the City. Service vehicles for equipment maintenance shall be parked on city streets, whenever possible unless off-street parking is available at the site. In the case of maintenance of Telecommunication Facilities on the City Water Tower, service vehicles shall park on the service entrance of the City Water Treatment Plant, whenever possible.

Conclusion. We are truly grateful that the City of Wayzata is taking these steps to accommodate wireless services in the community, and we will be in attendance at the upcoming meetings answer questions related to the development of the Verizon Wireless infrastructure in general, and to address any other issues related to these proposed revisions.

If any reader of this letter has questions in the meantime, please do not hesitate to contact me as we continue to look forward to working with the City to maintain – and improve – Verizon Wireless service.

Sincerely,



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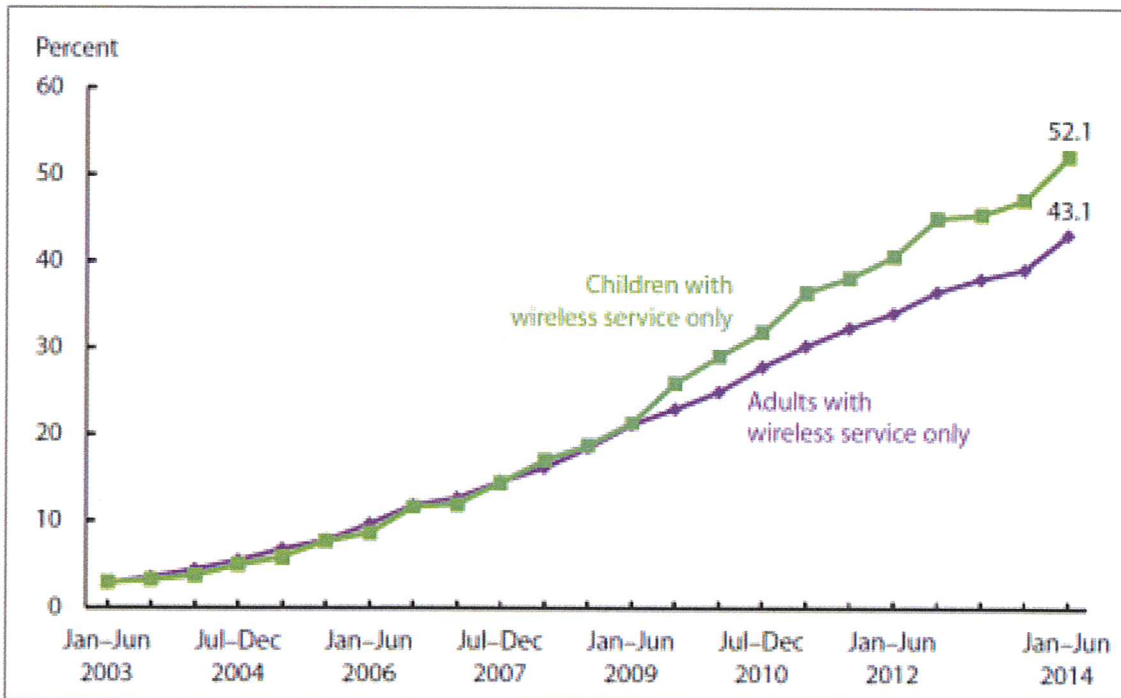
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Enclosures

**Verizon Wireless Comments on Proposed Amendments to
City of Wayzata Commercial Telecommunications Facilities Ordinance
October 1, 2015
Page 5 of 5**

cc: Cynthia Shuck, Verizon Wireless (via e-mail)
Scott Chamberlain (via e-mail)

¹ See U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Wireless Substitution: State-level Estimates from the National Health Interview Survey*, January–June 2014 (December, 2014) at p. 1 available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf>, wherein the following appears:

Figure. Percentages of adults and children living in households with only wireless telephone service: United States, 2003–2014



NOTE: Adults are aged 18 and over; children are under age 18.
DATA SOURCE: CDC/NCHS, National Health Interview Survey.

HENNEPIN COUNTY, MINNESOTA

DRAFT ORDINANCE NO. 756
COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL
ACCESSORY COMMUNICATION DEVICES

AN ORDINANCE AMENDING WAYZATA'S ZONING ORDINANCE
TO CONFORM WITH MINNESOTA STATUTE SECTION 462.357, SUBD. 2(b)

THE CITY OF WAYZATA ORDAINS:

1.1 In accordance with the Recommendation of the Wayzata Planning Commission dated _____, 2015, the City Council of the City of Wayzata, hereby repeals Chapter 801 Section 31 "COMMUNICATION RECEPTION/TRANSMISSION DEVICES" and replaces it with Chapter 801 Section 31 "COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL ACCESSORY COMMUNICATION DEVICES" as follows:

SECTION 31
COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL
ACCESSORY COMMUNICATIONS DEVICES

Section 801.31:

801.31.1:	Purpose and Intent
801.31.2:	Definitions
801.31.3:	Permit Required for Telecommunication Facilities
801.31.4:	Building and Design Standards for Telecommunication Facilities
801.31.5:	General Standards for Telecommunication Facilities
801.31.6:	Applications for Telecommunication Facilities Permit
801.31.7:	Review of Permit Applications
801.31.8:	Appeals
801.31.9:	Revocation of Permit
801.31.10:	No Recourse Against the City
801.31.11:	Indemnification
801.31.12:	Severability
801.31.13:	Residential Accessory Uses

1. Purpose and Intent.

The purpose of this section is to establish objective and balanced regulations for the siting, screening and operation of wireless telecommunication facilities and equipment in order to accommodate Wireless Communication systems within the City while minimizing any adverse impacts on the City's natural resources, aesthetics, public welfare, all as allowed under applicable Federal law. This section recognizes that these wireless communication systems provide a valuable service to the public but that they are not a public utility. The specific purposes of this section are to:

- A. Specify allowed locations of commercial Telecommunication Facilities and Towers in the City;

- B. Protect residential, recreational and park areas from encroachment by commercial operations, including, but not limited to, Telecommunication Facilities and Towers;
- C. Minimize adverse visual impacts of Telecommunication Facilities and Towers through careful design, optimum siting, appropriate landscaping, innovative camouflaging-screening techniques and stealth poles;
- D. Require, where possible, the co-location of Telecommunications Towers and Antennas support structures on Towers or existing structures as a primary option rather than construction of multiple single-use Towers;
- E. Require utilization of technological designs that either eliminate or reduce the need for erection of new Tower structures to support Telecommunications Facilities;
- F. Minimize potential damage to property caused by Telecommunication Facilities and Towers by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound;
- G. Ensure that Telecommunication Facilities and Towers are compatible with surrounding land uses;
- H. Provide development standards for Wireless Telecommunication Facilities that are consistent with the requirements of the Federal Telecommunications Act of 1996, as amended, or other applicable Federal, State and local laws, statutes, ordinances and regulations.

2. Definitions.

For the purposes of this section, the terms below have the meaning given to them, unless the context clearly indicates a different meaning:

- A. **"Accessory Equipment"** means the wires, cables, generators, air conditioning units, and other equipment or facilities that are used in conjunction with Telecommunication Facilities and Telecommunication Equipment
- B. **"Applicant"** means any person or entity who files an application for any permit or is party to any lease agreement required by this Ordinance for the construction, replacement, installation, or alteration of wireless communication facility or any component thereof.
- C. **"Antenna"** means any exterior transmitting or receiving device mounted on a Tower, Monopole, building, or other structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communications signals. "Antenna" does not include a lightning rod.

- D. **"Antenna Support Structure"** means any new or existing Tower, building, water tower, or electric transmission tower carrying over 200 kilo volts of electricity that can be used for the location of Antennas without increasing the height or mass of the existing structure.
- E. **"Engineer"** means a radio, electrical, structural, or mechanical engineer licensed by the State of Minnesota.
- F. **"Equipment Shelter"** means an enclosed structure at the base of or near a Telecommunication Facility, Tower, or Antenna within which are housed, among other things, batteries, generators, air conditioning units, wireless communications or electrical equipment, or other Accessory Equipment, which may be connected to the Telecommunications Facility, Tower or Antenna by cable.
- G. **"Co-location"** means the sharing of structures by two or more wireless service providers on a single support structure or otherwise sharing a common location.
- H. **"Monopole"** means a slender self-supporting Tower used to support Antennas and Accessory Equipment.
- I. **"Permit Holder"** a person or entity who holds a permit issued pursuant to this Ordinance for a Telecommunications Facility.
- J. **"Public Utility Structure"** means a structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications.
- K. **"Residential Accessory Communication Devices"** means any satellite dishes, television Antennas, radio Antennas, amateur (ham) radio Antennas, and similar communication transmission/reception devices and within a residential district.
- L. **"Stealth Design"** means state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include architecturally screening roof-mounted Antennas and Accessory Equipment; integrating Telecommunications Facilities into architectural elements; nestling Telecommunications Facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the Telecommunications Facilities; and designing Towers to appear other than as Towers, such as light poles, power poles, flag poles, and trees.
- M. **"Telecommunications Equipment"** means Antennas, Accessory Equipment, or Towers.

- N. **"Telecommunications Facilities"** means any facility or location maintained by a commercial enterprise where Telecommunications Equipment is located.

The following shall not be considered Telecommunication Facilities:

- i. Licensed amateur (ham) radio Antennas, regulated under subsection 801.31.13 below.
- ii. Television Antennas and satellite dish Antennas for reception within individual homes or businesses, regulated under subsection 801.31.13 below.
- iii. Temporary Telecommunication Facilities placed in service during an emergency declared by a government agency or for special events requiring wireless service capacity or coverage that is not available from existing Telecommunication Facilities.

- O. **"Tower"** means any of the following: a ground or roof mounted pole; spire; free standing, self-supporting lattice or monopole structure; or combination thereof taller than ~~fifteen (15)~~ 25 thirty (30) feet, including but not limited to supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an Antenna, meteorological device, or similar apparatus above grade (except amateur radio Antennas).

Comment [CU1]: AT&T would agree to 25 ft.

- P. **"Wireless Communications"** means any personal wireless services as defined in the Federal Communications Act of 1996, including FCC licensed commercial wireless Telecommunications services including, but not limited to, cellular, personal communication services (PCS),

specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), global system of mobile communication (GSM), paging and similar services that currently exist or may be developed.

3. Permit Required for Telecommunication Facilities.

In addition to any Conditional Use Permit that may be required below, prior to the construction or operation of a Telecommunications Facility, the owner and operator of the Telecommunications Facility must obtain a permit for the proposed Telecommunications Facility according to the provisions of this Ordinance, termed a "Telecommunication Facilities Permit".

4. Buiding and Design Standards and Allowed Locations for

Telecommunications Facilities. All Telecommunications Facilities shall be constructed and maintained in accordance with the following standards:

A. Existing Telecommunication Facilities.

Existing Telecommunications Facilities located on or attached to existing structures, prior to the adoption of this Ordinance, are regulated by the provisions of the zoning district for each such parcel containing said structure. Once the leases for existing

Telecommunication Facilities expire or are otherwise terminated, the owner of the Telecommunication Facilities shall apply for a Telecommunication Facilities Permit under this Ordinance and those existing Telecommunications Facilities shall be required to conform to all requirements of this Ordinance for new Telecommunication Facilities. The City may, among other remedies, require relocation of equipment, at the Telecommunication Facilities expense, to permitted areas under this Ordinance. ~~Notwithstanding the above, nothing in this Section 4 shall be read to allow the City to prohibit a Telecommunication Facilities Permit based solely upon a request by the owner/operator for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended.~~

Comment [CU2]: AT&T proposes that this language section, as modified, be Moved to a new section 4(D) to make it clear that nothing in any portion of section 4 (including but not limited to subsection 4(A)) should be read to allow the City to deny a Telecommunication Facilities Permit requested by the owner/operator for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended.

B. New Telecommunications Facilities.

- i. New Telecommunications Towers shall be located only on the following parcels owned and/or controlled by the City of Wayzata, unless applicant obtains a Conditional Use Permit as further described below (in addition to the Telecommunication Facilities Permit required under subsection 3 above), with the exact location on such parcels determined at the sole discretion of the Wayzata City Council:

<u>Property Name</u>	<u>Property Identification Number</u>
City of Wayzata Public Works Facility	01-117-23-22-0004
Wayzata West Middle School	06-117-22-22-0008

- ii. Antennas shall be located on a new or replacement Tower at the locations permitted for Telecommunications Facilities only if the Applicant complies with the following requirements, in additions to the other requirements of this Ordinance:
 - a) The Applicant shall provide documentation and/or an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Antennas is necessary to meet the coverage and capacity needs of its system. The Applicant shall provide a network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits. The analysis shall also show the Antennas would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also pay the reasonable expenses of a radio or electrical engineer retained by the City, at the City's option, to review this analysis;
 - b) The new or replacement Telecommunications Facilities shall use as many Stealth Design techniques as reasonably possible and include non-proprietary information on stealth design technology. Economic considerations or hardships shall not be the sole justification for failing to provide Stealth Design techniques.

- c) The new or replacement Tower and Antenna, including attachments other than lightning rods, shall not exceed 150 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height up to 190 feet if the Council finds the increase in height would not have a significant visual impact, would not have a negative property value impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The City Council may waive this height limitation for a Tower and/or Antenna if used wholly or partially for essential public services, such as public safety.

iii. A new Antenna may be attached to an existing public utility structure within a right of way if:

- a) The Antenna does not extend more than fifteen (15) feet above the top of the existing utility structure.
- b) The Antenna is no larger than three (3) cubic feet and has no individual surface larger than four (4) feet than three (3) feet.
- d) There is no ground mounted equipment so long as the existing public utility structure is available for the mounting of such equipment.
- e) There is no interference with public safety communications or with the original use of the public utility structure.
- f) The Applicant agrees that the Antenna must be removed and relocated, at Applicant's expense, if the road authority requires the removal and relocation of the public utility structure.

Comment [CU3]: There are examples in cities where public utility structures are not inside a right-of-way (ROW) and rather part of a utility easement or conservation easement or another form of ownership/leasehold, rather than ROW. That is why we request deleting the words "within a right of way"

iv. New Antenna may be attached to an existing building if:

- a) the Applicant provides an analysis prepared by a radio or electrical engineer demonstrating the proposed location is necessary to meet the coverage and capacity needs of Applicant's. The analysis shall show a network map describing all of the Applicant's Telecommunications Facilities providing coverage within the City's limits and confirm the proposed Antennas would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also pay the reasonable expenses of an expert retained by the City, at the City's option, to review this analysis;
- b) the new Antenna and the associated Accessory Equipment use as many Stealth Design techniques as reasonably possible. Economic considerations or hardships shall not be the sole justification for failing to provide Stealth Design techniques;
- c) the building upon which the Antenna is to be located is located on a

parcel of land zoned C – 1 Office and Limited Commercial District, C-3 Service District or PUD Planned Unit Development;

- d) the building upon which the Antenna is to be located is within 300 feet of the Wayzata Blvd E right-of-way;
- e) the Antenna is attached to the façade of the building or to the rooftop parapet screening wall. A façade mounted Antenna shall not extend above the cornice line and a rooftop parapet mounted Antenna shall not extend more than fifteen (15) feet above the parapet wall. Façade and parapet wall mounted Antenna shall as closely as possible match the color of the underlying building
- f) Accessory Equipment shall be housed within an existing structure or within rooftop parapet screening walls whenever possible. If a new equipment building is necessary, it shall be situated to the rear or side of the principal use and shall be screened from view by landscaping where appropriate. If a new equipment building is necessary, the building shall be constructed of materials and color scheme compatible with the principal building.

C. Conditional Use Permits.

i. Telecommunication Facilities may not be located on any sites other than those that are designated in Section 801.31.4.B unless the Applicant first obtains a Conditional Use Permit for the location, provided that a Conditional Use Permit shall not be required for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended. Such a Conditional Use Permit may be approved provided all of the following are met:

- a) The requirements of Section 801.04 have been considered and satisfactorily met.
- b) Antennas attached to an existing building do not extend more than fifteen (15) feet above the highest point of the building.
- c) The Applicant provides documentation and/or an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Telecommunication Facility is necessary to meet the coverage and capacity needs of its system. The documentation and/or analysis must also show the Telecommunication Facilities would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also provide a network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits. The Applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the City, at the City's option, to review this analysis.

Comment [CU4]: Because federal law requires that a local government approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station, a conditional use permit should not be required for such a request.

- d) The new or replacement Telecommunications Facilities must use as many Stealth Design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide Stealth Design techniques.
- e) New or replacement Tower and/or Antennas must comply with the provisions of Section 801.31.5 below.
- ii. The City shall have the following priority ranking of land uses (as defined in the City of Wayzata Comprehensive Plan) suitable for potential new or replacement Telecommunication Facilities when considering a Conditional Use Permit application, with (a) being the highest priority and (d) being the lowest priority:
 - a) City Owned Property that is adjacent to highway rights of way and not adjacent to or adjoining residential property.
 - b) Institutional/Public Property that is not adjacent to or adjoining residential property.
 - c) Semi-Public/Private Property that is not adjacent to or adjoining residential property.
 - d) Mixed Use Commercial or Service Commercial properties that are not adjacent to or adjoining residential property.

If the proposed site is not the highest priority listed above, then a detailed explanation shall be provided as to why a site of a higher priority was not selected. The explanations shall include the reason or reasons why such a Conditional Use Permit should be granted for the proposed site and a description of the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

- iii. CUPs for new or replacement Telecommunication Facilities shall be prohibited in the following land use categories, as defined in the City of Wayzata Comprehensive Plan:
 - a) Parcels guided and utilized for residential purposes, including single family and multiple family.
 - b) Parcels guided and utilized for Park or Public Open Spaces
 - c) Parcels guided and utilized for Central Business District, Mixed Use Residential, or Downtown Mixed Use District.

DC. Eligible Facilities Requests

Nothing in this Section 4 shall be read to allow the City to deny -a Telecommunication Facilities Permit requested by the owner/operator for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended.

Comment [C05]: AT&T would insert new section here.

5. General Standards for Telecommunication Facilities.

All Telecommunications Facilities must comply with the following standards (although nothing in this Section 5 shall be read to allow the City to deny prohibit a

Telecommunication Facilities Permit ~~based solely upon a request~~ed by the owner/operator for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and is otherwise an "eligible facilities request" under 47 U.S.C. Section 1455 (a) and 47 C.F.R. Section 1.40001 (c), as the same may be amended.)-:

- A. **Vertical projection on Antenna support structures.** Antennas mounted on an existing Antenna support structure shall not extend more than 15 feet above the height of the structure to which they are attached. Wall or façade-mounted Antennas shall not extend above the cornice line and shall be constructed of a material or color that matches the exterior of the building.
- B. **Horizontal projection.** Antennas shall not project out from the side of the existing Antenna support structure, Tower or wall or facade by more than three feet.
- C. **Fall Zone Analysis.** The Applicant must submit a fall zone analysis report completed by a qualified and licensed engineer who shows the Telecommunications Facilities do not pose a threat to general health, safety and welfare of the City.
- D. **Setbacks.** A new Tower shall meet the building setback that is established for the district where it is to be located and the following additional standards:
 - i. The Tower shall be setback from all residential property lines at least one (1) foot for each foot in height, but shall have a minimum setback of at least one hundred (100) feet. The Tower setbacks may be increased by the City Council dependent on the results of the engineered fall zone analysis report submitted by the Applicant as part of the permit application.
 - ii. Towers and Telecommunications Facilities shall not encroach upon any easements unless written permission is obtained from the underlying property owner burdened by the easement and the beneficiary of the easement.
 - iii. The required setbacks may be reduced or the location in relation to a public street modified, at the sole discretion of the City Council, when the Telecommunications Facility is integrated into an existing or proposed structure such as a building, light or utility pole.
- E. **Height.** The height of an Antenna and/or Tower shall be the minimum necessary to meet the Applicant's coverage and capacity needs, as verified by an electrical engineer or other appropriate professional. Any new or replacement Tower and Antenna, including attachments other than lightning rods, shall not exceed 150 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height up to 190 feet if the Council finds: (i) the increase in height would not have a significant visual impact, (ii) would not have a negative property value impact on surrounding

properties because of proximity, topography or screening by trees or buildings or (iii) would accommodate two or more users.

- F. **Exterior surfaces.** Towers and Antennas shall be painted a non- contrasting color consistent with the surrounding area such as: blue, gray, green, brown, or silver, or have a galvanized finish to reduce visual impact. Metal Towers shall be constructed of, or treated with, corrosion-resistant material.

- G. ~~Underground Equipment Storage. If commercially reasonable, Accessory Equipment and/or equipment storage facilities shall be designed to be placed and be built underground adjacent to the Telecommunications Facility. If such underground placement is not commercially reasonable, then such Accessory Equipment and/or equipment storage facility shall be allowed to be placed above ground, subject to the restrictions of this Ordinance, including, but not limited to screening of existing equipment.~~

Comment [CU6]: Deleted per discussion at 10/5/15 Planning Commission meeting.

- H. **Ground-mounted equipment.** ~~If deemed commercially unreasonable for the Accessory Equipment and/or equipment storage facilities to be located underground, the ground-mounted~~ Accessory Equipment and/or equipment storage facilities shall be architecturally designed to blend in with the surrounding environment, including the principal structure and/or shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and compliments the character of the surrounding neighborhood. ~~No more than one Equipment Shelter or accessory building is permitted for each Tower. Equipment Shelters or accessory buildings shall be designed to accommodate additional space needed for the co-location of additional Antennas at the site.~~ Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review by City Staff, Planning Commission, and City Council, and any applicable Design Standards criteria under Section 801.09 of the Wayzata Zoning Ordinance. The Applicant shall be responsible for maintaining the structure in a high-quality condition. If the Applicant abandons or vacates the structure, it shall be forfeited to the City or torn down by the Applicant at their expense, at the discretion of the City Council.

Comment [CU7]: AT&T continues to believe that this language should be deleted, as is it not practical and would not apply to most sites, as some sites can only hold one carrier if stealth pole is used. In addition, for some sites, there may be a need for separate equipment areas, as some carriers have different sized equipment than others. This provision is not found in the ordinances of other communities. It is preferable to use fencing and landscape and screen walls to hide and mitigate the equipment, as needed.

- I. **Construction.** Telecommunications Facilities shall be in compliance with all buildings and electrical code requirements. All applicable federal, state and local agency licenses and/or permits shall be obtained. A Tower shall be designed and certified by a licensed structural engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the Telecommunications Facilities shall be in compliance with the manufacturer's specifications. If, upon inspection, the City concludes that a Tower or other portion of a Telecommunications 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 of the Telecommunication Facility or Tower, the owner shall have ~~thirty (30)- sixty (60)~~ days to bring such Tower or Telecommunication Facility into compliance with such standards. Failure to

bring such Tower or Telecommunication Facility into compliance with such thirty-day period shall constitute grounds for the removal of the Tower or Telecommunication Facility at the owner's expense.

- J. **Interference with Public Safety Telecommunications.** No Tower or Telecommunications Facility shall interfere with public safety Telecommunications. All Towers and Telecommunication Facilities shall comply with FCC regulations and licensing requirements.
- K. **Security Fencing and Screening.** Telecommunication Facilities and Towers shall be enclosed by security fencing not less than the height of the equipment located therein and shall also be equipped with an appropriate anti-climbing device. Fencing within one hundred (100) feet of a residential or parking property shall be constructed of a well-designed fence of wood or other environmentally sound material, and be compatible with the surrounding character of the area. The Telecommunication Facilities and Towers shall also include a landscape screen, at least six (6) in height, around the perimeter of equipment area, as approved by the City Council.
- L. **Other Protections.** The City may require shields to protect from ice falling from Towers, anti-climbing devices to prevent unauthorized persons from climbing Towers, or other appurtenances necessary to protect life and property.
- M. **Noise.** If the proposed Telecommunications Facility includes equipment that causes significant sound levels, sound buffers may be required including but not limited to, baffling, barriers, enclosures, walls and plantings. The Applicant shall submit an acoustical analysis (measured to the property line) and report prepared by a licensed and/or accredited sound engineer certifying that the noise to be generated from the proposed Telecommunication Facility shall not impact adjacent properties. Said report shall include, without limitation, a written description of all noise generated by the Facility, including retractable monopole motors, Antenna rotators, power generation, heating or air conditioning, and related equipment, and shall include the estimated times, frequency, duration and decibel levels of the noise. All equipment shall conform to Minnesota Pollution Control Agency decibel standards.
- N. **Sensitive Habitats.** No Telecommunication Facility shall be located in environmentally sensitive habitats, including but not limited to wetlands, shorelines, established animal habitats, conservation districts, and significant tree groups, unless mitigation measures can be adopted which would reduce potential impacts to levels of non-significance.
- O. **Radio Frequency Emissions.** Telecommunications Facilities shall comply with Federal Communication Commission standards for radio frequency emissions and interference.
- P. **Interference.** No Telecommunication Facility shall be permitted that causes interference with commercial or private use and enjoyment of other legally operating telecommunications devices including, but not limited to, radios, televisions, personal computers, telephones, personal communications devices, garage door openers, security systems, and other electronic

equipment and devices in violation of any Federal Communication Commission standards relating to radio frequency interference. Unless otherwise prohibited by Federal Communication Commission standards, an Applicant shall furnish a state registered engineer's certification that no such interference shall occur, or identify what interference may occur and how the Applicant shall mitigate any potential interference that may occur.

- Q. **Risk of Danger.** Telecommunications Facilities and Towers shall not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive or hazardous materials. Telecommunication Facilities, Towers, Antennas, and Accessory Equipment shall be subject to state and federal regulations pertaining to non-ionizing radiation and other health hazards related to such Facilities. If new, more restrictive standards are adopted, the Facilities shall be made to comply or continued operations may be restricted by the City Council. The cost of verification of compliance shall be borne by the Applicant.
- R. **Maintenance.** All Telecommunication Facilities and Towers shall at all times (i) be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any person, and (ii) allow sufficient access for service vehicles and personnel. Maintenance of equipment shall be scheduled for between 7:00am-6:00pm, Monday through Friday, unless in case of emergency or otherwise agreed to by the City. Service vehicles for equipment maintenance shall be parked on city streets, whenever possible. In the case of maintenance of Telecommunication Facilities on the City Water Tower, service vehicles shall park on the service entrance of the City Water Treatment Plant, whenever possible.
- S. **Co-location opportunity.** The Applicant, the Tower owner, the landowner, and their successors and assigns shall allow the shared use of the Tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use, shall submit a dispute over the potential terms and conditions to binding arbitration, and shall sign the Conditional Use Permit agreeing to these requirements. The City Council may waive these co-location requirements if necessary to implement stealth design.
- i. All Telecommunications Facility providers shall cooperate with each other in co-locating Telecommunication Facilities and shall exercise good faith in co-locating with other licensed carriers and in the sharing of sites, including the sharing of technical information necessary to evaluate the feasibility of collocation. In the event a dispute arises as to a co-location issue, the City may require a third-party technical study to evaluate the feasibility of co-locating at the expense of each wireless telecommunications providers involved in the third-party study;
 - ii. All proposed new Towers shall be designed to accommodate both the Applicant's Antennas and Antennas for as many other licensed carriers as can be technically located thereon, but not less than one additional;
 - iii. All new Towers and Facilities owned by a telecommunications provider

shall be made available for use by the owner or initial user thereof, together with as many other licensed carriers as can be technically located thereon, but not less than one additional;

- iv. All proposed new Towers shall be designed to allow for future rearrangement of Antennas or Tower modifications, and to accept Antennas mounted at varying heights unless the City otherwise agrees in order to accommodate Stealth Design techniques;
- T. **Successors and Assigns.** Any Permit or lease for a Telecommunications Facility shall run with the Property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, and assigns.
- U. **External messages.** No advertising message or identification signs, other than warning or equipment information signs as legally required, shall be affixed to the Telecommunications Facilities.
- V. **Lighting.** Telecommunications Facilities or Towers shall not be artificially illuminated unless required by law or by a governmental agency to protect the public's health and safety or unless necessary to facilitate service to ground-mounted equipment. Any lighting or artificial illumination utilized shall be shielded and not cast glare onto adjacent properties. All lighting shall be measured to the property line.
- W. **On-site employees.** There shall be no employees on the site at a Telecommunications Facility on a permanent basis. Occasional or temporary repair and service activities are allowed.

~~X. **Advances in Technology.** All Applicants/Permit Holders shall use and apply any readily available advances in technology that lessen the negative aesthetic effects of Telecommunication Facilities and Towers to the residential communities within the City. The City may review existing structures and compare the visual impact with available technologies in the industry for the purpose of removal, relocation or alteration of these structures in keeping with the general intent of this Ordinance. Such removal, relocation or alteration may be required by the City pursuant to its zoning power and authority.~~

Comment [CU8]: This provision should be deleted because it is contrary to federal law and is unenforceable. Local governments may not dictate the wireless technology used by a carrier (see New York SMSA Ltd. Partnership v. Town of Clarkstown, 603 F.Supp.2d 715 (S.D.N.Y. 2009), and it would be especially inappropriate to require use of standards and practices that are not even current industry standards. Technology is driven by the industry and market place and AT&T always strives to use the best and most updated technology at its sites.

- Y. **Removal.** After ~~thirty (30) days~~ one hundred and twentyeight days notice from the City to the Permit Holder all Telecommunications Facilities, Antennas, or Towers shall be required to be removed at the Permit Holder's expense, if such improvement is found to be in violation of any portion of this Ordinance by the City and such violation is not cured within such thirty day time period. Obsolete or unused Telecommunications Facilities and all related equipment shall be removed within six (6) months after cessation of their use at the site, unless an exemption is granted by the City Council. Telecommunications Facilities and related equipment that have become hazardous shall be removed or made not hazardous within 30 days after written notice to the current Permit Holder and to any separate landowner, unless an exemption is granted by the City Council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and

Comment [CU9]: AT&T agrees to 120days, per discussion at 10/5/15 Planning Commission meeting.

to the taxpayer of the property listed in the Hennepin County tax records. Telecommunications Facilities and all related equipment that are not removed within this time are declared to be public nuisances and may be removed by the City. The City may assess its costs of removal against the Property.

- Z. **No Recourse Against the City.** Every permit shall provide that, without limiting such immunities as the City or other persons may have under applicable law, an Applicant/Permit Holder shall have no monetary recourse whatsoever against the City or its elected officials, boards, commissions, agents, employees or volunteers for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement or lack of enforcement of this Ordinance or the City's exercise of its authority pursuant to this Ordinance, a permit, a lease, or other applicable law, unless the same shall be caused by criminal acts or by willful gross negligence. Nothing herein shall be construed as a waiver of sovereign immunity.

6. Applications for Telecommunications Facilities Permit.

An application for a permit for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station shall include information sufficient to demonstrate that the modification meets the standards set forth in 47 C.F.R. Section 1.40001.

For all other Telecommunications Facilities Permit applications, the following requirements apply. Permit Application.

In addition to an Applicant's name, address, certificate of survey, grading and landscaping plans, and other such similar information, an application for a permit under this Section shall include the following:

- A. A scaled site plan clearly indicating the location, type and height of the proposed Telecommunication Facility, Tower, or Antenna, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed equipment and any structures, topography, parking and any other information deemed by the City Staff to be necessary to assess compliance with this Section.
- B. A visual simulation of the proposed Telecommunication Facility Tower or Antenna. Visual simulation shall consist of either a physical mock-up of the Telecommunication Facility Tower or Antenna, balloon simulation, computer simulation, photo simulation, or other similar simulation. In instances where the proposed Telecommunications Facility Tower or Antenna is located near a residential area, photo simulations shall be submitted of the proposed Telecommunication Facility Tower or Antenna from the nearest residential neighbors unless the owners of such residential property refuse to allow the required photo to be taken.
- C. A report from a qualified and licensed professional engineer which:
 - i. Demonstrates that the Telecommunication Facility, Tower, Antenna

Comment [CU10]: This language should be added to ensure that the ordinance conforms with 47 C.F.R. 1.40001 (d), which provides that "[w]hen an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities."

and/or Accessory Equipment comply with the structural and electrical standards of this Section.

- ii. Describes the Tower height, if utilized.
 - iii. Documents the height above grade for all potential mounting positions for co-locating Antennas and the minimum separation distance between Antennas.
 - iv. Describes the Tower's capacity, if utilized, including the number and type of Antennas it can accommodate.
 - v. A network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits.
 - vi. Documents what steps the Applicant shall take to avoid interference with established public safety Telecommunications.
 - vii. Includes an engineer's stamp and registration number.
- D. A written statement acknowledging that failure to comply with this Section and the conditions of permit approval shall result in the revocation of the permit and removal of the Telecommunications Facility, Antenna, and/or Tower;
- E. Documentation that the Applicant has applied for and/or obtained any licenses and/or approvals that are required by federal and state agencies.
- F. A written statement indicating that the expenses incurred by the City to review and process the application, and to enforce the provisions of the permit shall be reimbursed by the Applicant.
- G. A written statement which requires the Applicant to utilize the procedures established by the Federal Communications Commission to resolve any complaints received relating to interference allegedly caused by the Telecommunications Facility, Antenna, and/or Tower.
- H. A written statement indicating that the Applicant shall cooperate in good faith and fair dealing in co-locating Telecommunications Facilities, Antenna and/or Towers.
- I. A written statement indicating that the Telecommunications Facility, Antenna, and/or Tower shall be maintained in good and safe condition and its original appearance and concealment, disguise or camouflage elements incorporated into the design at the time of approval shall be preserved. Such maintenance shall include, but not be limited to, painting, repair of equipment, and maintenance of landscaping.
- J. A written statement authorizing the City to conduct periodic inspections to determine that the Telecommunications Equipment complies with the provisions of this Section, any conditions of approval and all safety and building codes and permits issued. This statement shall give the City the right to conduct such inspections at any time upon a reasonable notice of five (5) business days to the Applicant, and that all expenses related to such inspections shall be borne by the Applicant.
- K. A written statement indicating that the Applicant understands that

Telecommunications Facilities, Antennas, and/or Towers which have not been used for six (6) months shall be deemed abandoned, and shall be removed pursuant to this Section.

- L. A written statement requiring the Applicant or current Permit Holder to notify the City that the Telecommunications Facility, Antenna, and/or Tower continue to be in operation. The notice of continuing operation shall be sent to the City Manager annually by certified mail within the last two (2) weeks of the month of December. The City shall provide written notice of failure to provide the required statement with a requirement that such statement be provided within 14 days from the date of such notice.

7. Review of Permit Applications.

The City shall process all applications for Telecommunication Facilities Permits in a timely manner and in accordance with established procedures and City Code.

8. Appeals.

At any time within thirty (30) days after a written order, requirement, determination or final decision has been made by the Zoning Administrator or other official interpreting or applying this Section, except for actions taken in connection with prosecutions for violations thereof, the Applicant or any other person affected by such action may appeal the decision in accordance with the provisions of the Zoning Ordinance.

9. Revocation of Permit.

A material breach of any terms and conditions of a permit issued for a Telecommunication Facility under this Section and the Zoning Ordinance may result in the revocation of the permit by the City. Penalties for a violation of a permit or this Section may include fines and removal of the Telecommunication Facility, Tower, or Antenna at the Applicant's/Permit Holder's expense.

10. No Recourse Against the City.

Every application for and issued permit shall provide a written acknowledgement, agreement and release from the Applicant and Permit Holder that, without limiting such immunities as the City or other persons may have under applicable law, an Applicant and Permit Holder shall have no monetary recourse whatsoever against the City or its elected officials, boards, commissions, agents, employees or volunteers for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement or lack of enforcement of this Ordinance or the City's exercise of or failure to exercise its authority pursuant to this Ordinance, a permit, a lease, or other applicable law, unless the same shall be caused by criminal acts or by gross negligence. Nothing herein shall be construed as a waiver of sovereign immunity.

11. Indemnification.

Each permit issued pursuant to this Section shall have as a condition of the permit, a requirement that the Applicant indemnify and hold harmless the City and its officers,

agents, and employees from actions or claims of any description brought on account of any injury or damages sustained by any person or property resulting from the issuance of the permit and conduct of the activities authorized under said permit.

12. Severability.

If any section, subsection, sentence, clause or phrase of this Section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Section. The City Council hereby declares that it would have passed this Section and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid.

13. Residential Accessory Uses.

Residential Accessory Communication Devices are a permitted accessory use within residential districts provided they meet the following conditions:

- A. **Use.** They are for use by residents upon whose property the Residential Accessory Communication Devices are located.
- B. **Height.** A ground mounted Residential Accessory Communication Device height shall not exceed fifteen (15) feet unless approved as a Conditional Use Permit by the City Council.
- C. **Yards.** The Residential Accessory Communication Device shall not be located within the required front yard setback, a required side yard or any side yard abutting a street. Communication devices shall be located five (5) feet or more from rear lot lines and shall not be located within a utility easement.
- D. **Roofs.** The Residential Accessory Communication Device may be placed on the roof of any authorized structure on the premises. The height of the Residential Accessory Communication Device shall not exceed six and one-half (6-1/2) feet above the peak of the roof, unless approved by a Conditional Use Permit by the City Council.
- E. **Neighboring Property Impact.** In cases where no building permit is required, the Residential Accessory Communication Device shall be so located that in the event it falls, it shall not fall on adjoining property.
- F. **Building Permits.** A building permit shall be required for the installation of any Residential Accessory Communication Device which requires a Conditional Use Permit, or for any device which has a structural surface exposure of greater than nine (9) square feet. Building permit applications shall be accompanied by a site plan and structural components data for the Residential Accessory Communication Device, including details of anchoring. The Building Official shall approve the plans before installation.
- G. **Color/Content.** Residential Accessory Communication Devices shall be of a neutral color and shall not be painted with scenes or contain letters or

messages.

- H. **Lightning Protection.** Each Residential Accessory Communication Device shall be grounded to protect against natural lightning strikes in conformance with the National Electrical Code as adopted by the City of Wayzata.
- I. **Electrical Code.** Residential Accessory Communication Device electrical equipment and connections shall be designed and installed in conformance with the National Electrical Code as adopted by the City of Wayzata.
- J. **Effective Date.** The provisions of this Section shall be applicable to all communication reception/transmission devices erected after 2015. All such structures existing prior to this date shall be addressed as legal non-conforming uses.
- K. **Conditional Use Permit.** Residential Accessory Communication Devices not qualifying as a permitted accessory use may be considered and approved through conditional use standards established by Section 801.04 of this Ordinance.

1.2 This Ordinance shall become effective upon its passage and publication.

Adopted this ____ day of _____, 2015.

Mayor Ken Willcox

ATTEST:

City Manager Heidi Nelson

First Reading:
Second Reading:
Publication:

Attachment C: Other Cities Telecommunication Antenna Regulations

St. Louis Park

Sec. 36-368. Communication towers and antennas.

(h) Building-Mounted Antennas.

- (1) Antennas attached to a building shall be no higher than 30 feet above the highest point of the building.
- (2) All building-mounted equipment shall be consistent with the architectural features of the building and be painted to match the color of the building exterior, roof or sky, whichever is most effective, as determined by the Zoning Administrator.

Rosemount

11-9-6: COMMERCIAL USE ANTENNA TOWERS AND COMMERCIAL ANTENNAS:

- F. Antennas Mounted On Roofs, Walls And Existing Towers: The placement of wireless communication antennas on roofs, walls, and existing towers may be permitted on public, institutional, commercial or industrial buildings or facilities, with a building permit approved by the appropriate city staff. In addition to the submittal requirements required elsewhere in this code, an application for a building permit for antennas to be mounted on an existing structure shall be accompanied by the following information:
1. A site plan showing the location of the proposed antennas on the structure and documenting that the request meets the requirements of this code.
 2. A building plan showing the construction of the antennas, the proposed method of attaching them to the existing structure, and documenting that the request meets the requirements of this code.
 3. A report prepared by a qualified and licensed professional engineer indicating the existing structure or tower's ability to support the antennas.
 4. An intermodulation study to ensure there will be no interference with existing tenants or public safety telecommunication providers.

Eagan

Sec. 11.70. - Performance Standards.

Subd. 26. Antennae, satellite dishes, wind energy conversion systems and towers.

- B. *Building mounted antennae and satellite dishes.* Building mounted antennae and satellite dishes shall be permitted in all zoning districts of the city, subject to the following requirements:
1. The height of any building mounted antenna or satellite dish, including its support structure, shall not exceed 50 percent of the total building height or 15 feet above the highest point of the roof, whichever is less;

2. Accessory equipment associated with a building mounted antenna or satellite dish shall be located within the building or within a roof or ground enclosure which is constructed of materials and color scheme compatible with the principal building;
3. Building mounted satellite dishes located within any agricultural district (A), estate district (E), residential district (R-1, R-1S, R-2, R-3, and R-4), public facilities (PF) district, or planned development district, within the area designated solely for residential uses under a planned development agreement (PD) shall not be larger than one meter (39 inches) in diameter; and
4. Building mounted satellite dishes and antennae located within any agricultural district (A); estate district (E); residential district (R-1, R-1S, R-2, R-3, and R-4); public facilities district (PF); or planned development district within the area designated solely for residential uses under a planned development agreement (PD) shall not be used for commercial purposes.

Minnetonka

5. General Standards.

The following standards apply to all telecommunications facilities.

- a) Vertical projection on antenna support structures. Antennas mounted on an antenna support structure must not extend more than 15 feet above the height of the structure to which they are attached. Wall or facade-mounted antennas may not extend above the cornice line and must be constructed of a material or color that matches the exterior of the building.
- b) Horizontal projection. Antennas must not project out from the side of the antenna support structure or tower, unless it is physically impossible to locate the antennas within the structure or tower, in which case they must not project out by more than three feet by more than three feet.

Plymouth

SECTION 21175 – ANTENNAS

21175.07. PERSONAL WIRELESS SERVICE ANTENNAS:

Subd. 1. Residential District and Public/Institutional District Standards.

- (a) Antennas Located Upon An Existing Structure Or Existing Tower: Personal wireless service antennas located upon an existing structure or existing tower shall require the processing of an administrative permit and shall comply with the following standards:
 - (1) The applicant shall demonstrate by providing a coverage or capacity analysis prepared by a professional engineer that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the personal wireless service system and to provide adequate wireless coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive zoning district.
 - (2) Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and

switching equipment, it shall be situated in the rear or side yard of the principal use and shall be screened from view by landscaping where appropriate.

- (3) An administrative permit is issued in compliance with the provisions of Section 21025 of this Chapter.
- (4) The maximum height for antennas to be placed upon an existing structure (includes buildings and light standards) shall be regulated by Section 21115.02, Subd. 1 of this Chapter.
- (5) Antennas mounted upon an existing high voltage transmission tower shall not extend more than 20 feet above such high voltage transmission tower.
- (6) There is no maximum height limitation for antennas to be co-located upon an existing wireless communication tower, provided the height of such existing tower is not increased.

Subd. 2. Commercial or Business District Standards:

- (a) Antennas Located Upon An Existing Structure Or Existing Tower: Personal wireless service antennas located upon an existing structure or co-located on an existing tower shall require the processing of an administrative permit.
 - (1) Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated in the rear or side yard of the principal use and shall be screened from view by landscaping where appropriate.
 - (2) An administrative permit is issued in compliance with the provisions of Section 21025 of this Chapter and the following standards.
 - a. Antennas mounted on public structures shall not extend more than fifteen (15) feet above the height of the structure to which they are attached.
 - b. Building-mounted antennas shall not extend more than ten (10) feet above the roof, and shall be set back at least five (5) feet from the roof edge.
 - c. Wall or facade mounted antennas may not extend more than five (5) feet above the cornice line and must be constructed of a material or color which matches the exterior of the building.
 - d. Antennas mounted upon an existing high voltage transmission tower shall not extend more than 20 feet above such high voltage transmission tower.
 - e. There is no maximum height limitation for antennas to be colocated upon an existing wireless communication tower, provided the height of such existing tower is not increased.

SECTION 21115 - GENERAL YARD, LOT AREA AND BUILDING REGULATIONS

21115.02. HEIGHT:

Subd. 1. The building height limits established in each zoning district shall not apply to the following list of items, except that no such structural element may exceed 50 feet in total height or exceed

the maximum allowable height of the building by more than 10 feet, whichever is greater, except by conditional use permit.

- (a) Antennas installed on an existing structure.

Eden Prairie

SECTION 11.06. TOWERS AND ANTENNAS.

Subd. 6. Exceptions. The provisions of Subds. 4 and 5 shall not apply to the following:

1. Water towers and poles supporting emergency warning devices to which are attached antennas.
2. Place of Worship sanctuaries, steeples and bell towers to which are attached antennas.
3. In accordance with the preemption ruling PRB1 of the Federal Communications Commission, towers for amateur radio communication that comply with other provisions of City Code Chapter 11 relating to towers.

Edina

Chapter 34 – TELECOMMUNICATIONS

ARTICLE II. - ANTENNAS AND TOWERS

Sec. 34-48. - General requirements

All antennas, dish antennas and towers, for which a permit is required, shall comply with the following requirements:

- (10) *Antennas attached to buildings.* Antennas which are attached to any facade of a building or structure shall as closely as possible match the color of the underlying building material.

Bloomington

SEC. 19.63. places of assembly.

- (a) **Standards** - Freestanding place of assembly uses and sites must comply with the following standards.
 - (10) Bell towers, steeples, spires and similar structures must meet the following standards:
 - (A) Height. The height of bell towers, steeples, spires and similar structures must not exceed 65 feet.
 - (B) Location. Bell towers, steeples, spires and similar structures must be located at least 25 feet from a side or rear property line and at least 50 feet from a front property line or property line abutting a public street.
 - (C) Antenna Mounting. When antennas are mounted on bell towers, steeples, spires or similar structures, the following standards apply:

- (i) **Design.** The structure must be designed to visually appear as a bell tower, steeple, spire or similar structure and not be identifiable as an antenna tower. To ensure that a bell tower, steeple, spire or similar structure that supports antennas is fully camouflaged and appears to be a planned architectural element rather than an antenna tower, the design of the bell tower, steeple, spire or similar structure must replicate the unique design features of the place of assembly principal building structure, must be constructed of materials and use colors that complement and effectively integrate it with the principal structure and must not be a replication of a similar structure that supports antennas at another site within the city. The number of bell towers, steeples, spires or similar structures on an individual site must be compatible with the design of the principal structure. If more than one bell tower, steeple, spire or similar structure is present on a site, each must be architecturally coordinated with the other and they must appear as planned design elements.
- (ii) **Antenna Visibility.** The antennas, cables and associated mounting devices must be screened or otherwise concealed from view.
- (iii) **Equipment.** The associated ground equipment must meet the setback requirements of the structure and must be fully screened by a wall or fence that is architecturally compatible with the principal structure.

SEC. 19.63.05. TOWERS.

- (1) **Antennas Mounted on Roofs, Walls, and Existing Towers.** The placement of wireless telecommunication antennas on roofs, walls, and existing towers may be approved by the Planning Manager, provided the antennas meet the requirements of this Code, after submittal of 1) a final site and building plan as specified by Section 21.501.01 of this Code, and 2) a report prepared by a qualified and licensed professional engineer indicating the existing structure or tower's suitability to accept the antenna, and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated. Antennas shall be mounted on the facade of the building or penthouse structure unless the Planning Manager or designee determines that another antenna mounting location decreases the visual impact of the antennas. All roof mounted equipment shall be screened from view in accordance with Section 19.52.01 of this Code.

SEC. 19.52.01. SCREENING OF ROOF-MOUNTED EQUIPMENT.

- (a) Roof-mounted mechanical equipment installed on buildings constructed within the City shall be screened from view. This requirement shall be deemed satisfied when all parts of the roof-mounted equipment are not visible from ground level observation or at any point on the property, adjacent property, or from adjacent streets.
- (b) Screening required by this Section shall comply with the following:
 - (1) The screening shall be permanently attached to the building and shall be capable of withstanding all load requirements as outlined in the State of Minnesota Building Code.
 - (2) The screening shall be constructed with materials that are architecturally compatible with the building. The use of wood, in whole or in part, as a screening material shall not be

considered as being architecturally compatible unless the building is constructed with a wood exterior.

(3) A parapet wall of sufficient height and as an integral part of the building shall be considered as approved screening.

(4) Reserved.

(5) All roof-top screening shall be kept in repair or in a proper state of preservation.

(6) Existing screening which requires major alteration or replacement shall meet the requirements of this Section.

Woodbury

DIVISION 4. - ANTENNAS AND TOWERS

Sec. 24-314. - Purpose and intent.

(h) When selecting freestanding sites, the following requirements shall be followed:

(1) Locations for wireless communication antennas as permitted uses.

Water towers.

Co-location on existing telecommunication monopoles or towers.

Roofs of buildings over three stories.

Sides of buildings over two stories.

Existing power or phone pole corridors.

Public streets and rights-of-way where attached to, or part of a public utility structure.

Sec. 24-319. - Construction requirements and area, setback and height restrictions.

(c) Antennas and towers shall not be erected in any zoning district in violation of the following restrictions:

(12) Wireless telephone antennas, where the antennas are located on an existing structure, provided that the antennas shall not extend more than 20 feet above the structure to which they are attached, whichever is less, shall be permitted used in all zoning districts in the city. Transmitting, receiving, and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated five feet from the side or rear yard property line and shall be landscaped where appropriate.

Burnsville

Chapter 20 B-1 OFFICE BUSINESS DISTRICT

10-20-3: PERMITTED ACCESSORY USES:

Within any B-1 office business district, the following uses shall be permitted accessory uses:

Antennas mounted on an existing structure, not exceeding fifteen feet (15') above the highest point of the structure, as regulated by chapter 29 of this title.

10-20-4: CONDITIONAL USES:

Within any B-1 office business district, no structure or land shall be used for the following uses except by conditional use permit:

Antennas mounted on an existing structure, exceeding fifteen feet (15') above the highest point of the structure, as regulated by chapter 29 of this title.

Chapter 29 TOWERS AND ANTENNAS

10-29-9: DESIGN STANDARDS:

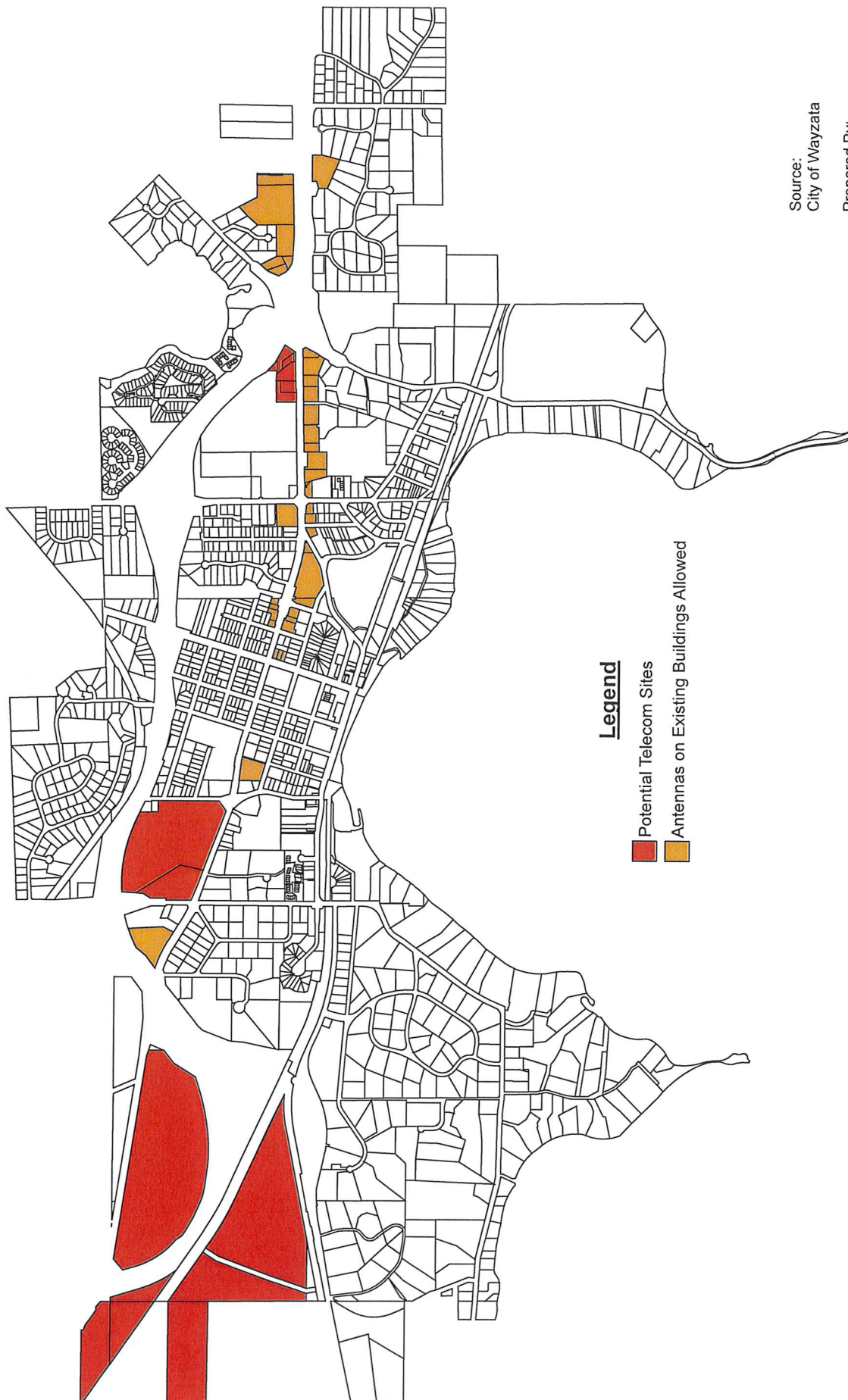
Proposed or modified towers and antennas shall meet the following requirements:

- (A) Towers and antennas (including antenna cables) shall be designed to blend into the surrounding environment to the maximum extent possible as determined by the city through the use of building materials, colors, texture, screening, landscaping, and other camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the federal aviation administration;

10-29-12: ANTENNA COLLOCATION REQUIREMENTS:

- (A) Requirements: In all zoning districts except the HOC district, the placement of personal wireless service antennas on roofs, walls, and existing towers may be approved by the city, with a building permit.

1. In addition to the submittal requirements required elsewhere in this code, an application for a building permit for antennas to be mounted on an existing structure shall be accompanied by the following information:
 - a. A site plan showing the location of the proposed antennas on the structure and documenting that the request meets the requirements of this code.
 - b. A building plan showing the construction of the antennas and the proposed method of attaching them to the existing structure, and documenting that the request meets the requirements of this code.
 - c. Certification by a qualified and licensed professional engineer indicating the existing structure's or tower's ability to support the antennas.
2. Antenna collocation requirements for HOC zoning districts are regulated by sections [10-22B-2](#) and [10-22B-4](#) of this title. (Ord. 1316, 4-8-2014)

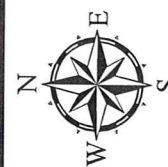


Legend

- Potential Telecom Sites
- Antennas on Existing Buildings Allowed

Source:
City of Wayzata

Prepared By:
City of Wayzata Planning Department
10/05/2015
DRAFT



Telecom Site Land Use Review

