

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 2014-07

Passed September 16, 2014

## **AN ORDINANCE ESTABLISHING REGULATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES IN THE CITY OF BROOKVILLE, OHIO.**

**WHEREAS**, Council has determined that it is necessary and proper to adopt certain zoning regulations for wireless telecommunication facilities located in the City of Brookville, Ohio; and

**WHEREAS**, after public hearing on this Ordinance as required by Section 4.11 of the Charter of the City of Brookville, Ohio, and upon recommendation of the Planning Commission, the Council of the City of Brookville, Ohio hereby adopts the following zoning regulations for the use of electronic message centers in the City of Brookville, Ohio.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROOKVILLE, OHIO THAT:**

**SECTION I:** The Council of the City of Brookville, Ohio hereby adopts the following regulations for Wireless Telecommunication Facilities in the City of Brookville, Ohio:

### **CHAPTER 1169-Wireless Telecommunication Facilities**

#### **1169.01 PURPOSE**

The purpose of this chapter is to regulate the placement, construction, and modification of wireless telecommunication facilities and their support structures in order to protect the public health, safety and welfare, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace. Specifically, the purposes of the chapter are:

- (a) To direct the location of various types of towers and wireless telecommunications facilities into appropriate areas of the City of Brookville, Ohio.
- (b) To protect residential areas and land uses from potential adverse impacts of towers and wireless telecommunication facilities.
- (c) To minimize adverse visual impacts of towers and wireless telecommunication facilities through careful design, siting, landscaping and innovative camouflaging techniques.
- (d) To promote and encourage shared use/co-location of towers and antenna support structures as a primary option rather than construction of additional single-use towers.
- (e) To avoid potential damage to adjacent properties caused by towers and wireless telecommunications facilities by ensuring that such structures are soundly designed, constructed, and modified, appropriately maintained, and are fully removed when abandoned.
- (f) To the greatest extent feasible, to ensure that towers and wireless telecommunications facilities are compatible with surrounding land uses.
- (g) To the greatest extent feasible, to ensure that towers and wireless telecommunications facilities are designed in harmony with natural settings and in a manner consistent with current development patterns.

#### **1169.02 APPLICABILITY**

Wireless telecommunication facilities must be situated in zoning districts wherein such facilities are listed as permitted or conditional uses and are subject to this chapter. Except as

# RECORD OF ORDINANCES

Ordinance No. 2014-07

Passed September 16, 2014

provided in this chapter, any use of an existing tower or antenna support structure on the effective date of this chapter shall be deemed to be a nonconforming structure and allowed to continue, even if in conflict with the terms of this chapter. Any tower site that has received approval in the form of a building permit by the City of Brookville, Ohio, but has not yet been constructed or located, shall be considered a nonconforming structure so long as such approval is current and not expired.

## 1169.03 DEFINITIONS

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When consistent with the context, words used in the present tense include the future tense, words in the plural number included the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) Antenna. Any panel, whip, dish, or other apparatus designed for commercial communications through the sending and/or receiving of electromagnetic waves, excluding any support structure other than brackets.
- (b) Antenna Support Structure. A ground-based tower which can be used for location of wireless telecommunication facilities.
- (c) Applicant. Any person who applies for a permit pursuant to this chapter.
- (d) Application. The process by which an applicant submits a request and indicates a desire to be granted a special use permit under the provisions of this Zoning Code. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by an applicant to the City of Brookville, Ohio concerning such a request.
- (e) Co-location. The use of a wireless telecommunication facility by more than one wireless telecommunications provider.
- (f) Emergency. A reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.
- (g) Engineer. Any engineer licensed by the State of Ohio.
- (h) Equipment Shelter. The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.
- (i) FAA. The Federal Aviation Administration and any legally appointed, designated or elected agent or successor.
- (j) FCC. The Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (k) Monopole. A support structure constructed to a single, self-supporting hollow metal tube securely anchored to a foundation.
- (l) Person. Any natural person, firm, partnership, association, corporation, or other legal entity, private or public, whether for profit or not-for-profit.

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 2014-07

Passed September 16, 20 14

(m) Tower. A self-supporting lattice, guyed, or monopole structure constructed from grade which supports wireless telecommunication facilities. The term "tower" shall not include an amateur radio operator's equipment, as licensed by the FCC.

(n) Wireless Telecommunications Facility. Any cables, wires, lines, wave guides, antennas and any other equipment or facilities associated with the transmission or reception of communications as authorized by the FCC which a person seeks to locate or have installed upon a tower antenna support structure. However, the term "wireless telecommunication facility" shall not include:

(1) Any satellite earth station antenna two meters in diameter or less which is located in an area zoned industrial or commercial.

(2) Any satellite earth station antenna one meter or less in diameter, regardless of zoning category.

(3) Antennas used by amateur radio operators.

## **1169.04 STANDARDS APPLICABLE TO ALL WIRELESS TELECOMMUNICATION FACILITIES.**

(a) Construction Standard. All wireless telecommunications facilities and support structures shall be certified by an engineer licensed in the State of Ohio to be structurally sound and, at a minimum, in conformance with the Ohio Building Code.

(b) Natural Resource Protection Standards. The location of the wireless telecommunications facility shall comply with all natural resource protection standards established either in this chapter or in other applicable regulations, including those for flood plains, wetlands, groundwater protection, and steep slopes.

(c) Historic or Architectural Standards Compliance. Any application to locate a wireless telecommunications facility on a building or structure that is listed on a Federal, State or local historic register, or is in a historic district established by the City of Brookville, Ohio, shall be subject to review by the City of Brookville Planning Commission to insure that architectural and design standards are maintained.

(d) Color and Appearance Standards. All wireless telecommunications facilities shall be painted a non-contrasting gray or similar color minimizing their visibility, unless otherwise required by the Federal Communications Commission, Federal Aviation Administration, and/or by historical or architectural standards imposed under subsection (c) hereof. All appurtenances shall be aesthetically and architecturally compatible with the surrounding environment by means of camouflage deemed acceptable by the City of Brookville, Ohio.

(e) Advertising Prohibited. No advertising is permitted anywhere upon or attached to the wireless telecommunication facility.

(f) Artificial Lighting Restricted. No wireless telecommunications facility shall be artificially lit except as required by the Federal Aviation Administration.

(g) Co-Location. All wireless telecommunications facilities shall be subject to the co-location requirements set forth in Section 1169.05.

(h) Abandonment. All wireless telecommunications facilities shall be subject to the abandonment requirements set forth in Section 1169.07.



# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 2014-07

Passed September 16, 2014

(i) Security Enclosure Required. All towers and equipment shelters shall be enclosed either completely or individually as determined by the City of Brookville, Ohio. The City of Brookville, Ohio and co-locators shall have reasonable access. No fence shall be required on top of a building or other structure if access to the roof or top of the structure or building is secure.

(j) Existing Vegetation and Buffer Plantings. Existing vegetation (trees, shrubs, etc.) shall be preserved to the maximum extent possible. Buffer plantings shall be located around the perimeter of the security enclosure as deemed appropriate by the City of Brookville, Ohio. An evergreen screen may be required around the perimeter of the property in lieu of such buffer plantings.

(k) Access Control and Emergency Contact. "No Trespassing" signs shall be posted around the wireless telecommunication facility, along with a number of whom to contact in the event of an emergency.

(l) Construction Standards in Industrial Districts. Wireless telecommunications facilities are special uses in the I-1, I-2 and PI districts, and shall be subject to the following construction standards:

(1) The tower height shall not exceed 200 feet.

(2) The tower shall meet all setback and yard requirements of the Industrial Zoning District in which it is located.

(3) No tower shall be located such that the distance from the tower to a residentially zoned property or residential use is less than 500 feet.

(4) All equipment shelters, located above ground, shall meet the required setback and yard requirements for the Industrial Zoning District in which it is located.

## 1169.05 CO-LOCATION REQUIREMENTS.

(a) Co-location Design Required. No new tower shall be constructed in the City of Brookville, Ohio unless such tower is capable of accommodating at least one additional wireless telecommunications facility owned by another person.

(b) Technically Suitable Space. Authorization for a tower shall be issued only if there is not technically suitable space reasonably available on an existing tower or structure within the geographic area to be served.

(c) Application Requirements. With the permit application, the applicant shall list the location of every tower, building, or structure within a reasonable proximity that could support the proposed antenna. The applicant must demonstrate that a technically suitable location is not reasonably available on an existing tower, building, or structure within such area. If another communication tower owned by another party within such area is technically suitable, the applicant must show that an offer was made to the owner of such tower to co-locate an antenna on a tower owned by the applicant on reciprocal terms within the City of Brookville, Ohio, and the offer was not accepted. If such co-location offer has not been attempted by the applicant, then such other tower is presumed to be reasonably available.

## 1169.06 ABANDONMENT OF TOWER

(a) Required Notification. All providers utilizing towers shall present a report to the City Zoning Inspector supplying notification regarding the discontinuation of any tower facility and the date this use will cease. Such report shall be filed at least thirty days prior to the cessation date. If at any time the use of the facility is discontinued for 180 days, the Zoning Inspector may declare the facility abandoned. The 180 day period excludes any dormancy period between construction and the initial use of the facility. The owner/operator

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 2014-07

Passed September 16, 2014

of the facility will receive written notice from the Zoning Inspector and be instructed to either reactivate use of the facility within 180 days, or dismantle and remove the facility. If reactivation or dismantling does not occur, the City of Brookville, Ohio will both remove the facility or contract to have the facility removed and assess the owner/operator the costs.

(b) Required Notice to Owner. The City of Brookville, Ohio must provide the tower owner thirty (30) day notice and an opportunity to be heard before the Board of Zoning Appeals before initiating action to remove the facility. After such notice has been provided, the City of Brookville, Ohio shall have the authority to initiate proceedings to either acquire the tower and any appurtenances attached thereto at the current fair market value at that time, or, in the alternative, order the demolition of the tower and all appurtenances.

(c) Right to Public Hearing: The City of Brookville, Ohio shall provide the tower owner with the right to request a public hearing before the Board of Zoning Appeals, which public hearing shall follow the thirty (30) day notice period required by subsection (b) hereof. All interested parties shall be allowed an opportunity to be heard at the public hearing.

(d) Order of Abatement or Demolition. After a public hearing is held pursuant to subsection (c) hereof, the City of Brookville, Ohio may order the abatement or demolition of the tower. The City of Brookville, Ohio shall require the licensee to pay for all expenses necessary to acquire or demolish the tower.

## 1169.07 APPLICATION AND REVIEW REQUIREMENTS

(a) Required Information for Applications. All applications for wireless telecommunications facilities, including towers, shall include the information required under this chapter.

(b) Plot Plan Required. When a proposed wireless telecommunications facility or antenna support structure is to include a new tower, a plot plan at a scale of not less than one inch to 100 feet shall be submitted. This plot plan shall include all building and land uses within 200 feet of the proposed facility. Aerial photos and/or renders may augment the plot plan.

(c) Photo Simulations Required. Photo simulations of the proposed wireless telecommunications facility from affected residential properties and public rights-of-way taken at designated locations shall be provided.

(d) Technical Necessity. The applicant shall demonstrate that the telecommunications tower must be located where it is proposed in order to provide adequate coverage to the applicant's service area. There shall be an explanation of why a tower and the proposed site are technically necessary.

(e) Review by Radio Frequency Engineer. The evidence submitted by the applicant regarding technical necessity shall be reviewed by a radio frequency engineer, who will support or refute the evidence.

(f) Land Owner Support and Access. Where the wireless telecommunications facility is located on property with another principal use, the applicant shall present documentation that the owner of the property supports the application and vehicular access is provided to the facility.

(g) Required Site and Landscaping Plan. The applicant shall present a site and landscaping plan providing the following:

- (1) Specific placement of the wireless telecommunication facility on the site.
- (2) The location of existing structures, trees, and other significant site features.
- (3) Type and locations of plant materials used to screen the facilities.
- (4) The proposed color of the facilities.

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 2014-07

Passed September 16, 20 14

(h) Co-location and Removal Agreement. The applicant shall provide signed statements indicating that:

(1) The applicant agrees to allow for the potential co-location of additional wireless telecommunication facilities by other providers on the applicant's structure or within the same site location; and

(2) The applicant agrees to remove the facility within 180 days after its use is discontinued.

(i) Denial by Jurisdiction. Any decision to deny a request to place, construct or modify a wireless telecommunication facility and/or tower shall be in writing and supported by evidence contained in a written record.

**SECTION II:** Section 1143.02(b)(10) and Section 1145.02(b)(17) are amended as follows:

Radio, Television or other transmission towers and related station facilities, and Wireless Telecommunication Facilities.

**SECTION III:** Section 1163.03 (b)(34) is amended as follows:

Wireless Telecommunication Facilities

A. Wireless Telecommunication Facilities shall be subject to the provisions of Chapter 1169 of the Code of Ordinances.


**SECTION IV:** Section 1163.03(b)(34) through (b)(39) shall be renumbered (b)(35) through (b)(40).

**SECTION V:** This Ordinance shall take effect thirty (30) days after passage of this Ordinance as provided by the Charter of the City of Brookville, Ohio.

PASSED this 16th day of September 2014.

ATTEST:

  
Sonja M. Keaton, Clerk

  
David E. Seagraves, Mayor

**CERTIFICATE**

The undersigned, Clerk of the City of Brookville, does hereby certify that the foregoing is a true and correct copy of Ordinance No. 2014-07, passed by the Council of the City of Brookville, Ohio, on the 16th day of September 2014.

  
Sonja M. Keaton, Clerk

**CERTIFICATE OF POSTING**

The undersigned, Clerk of the City of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 2014-07 was posted at the City Building, US Post Office and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio, on the 17th day of September 2014, to the 16th day of October 2014, both days inclusive.

  
Sonja M. Keaton, Clerk