

RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 90033

Ordinance No. _____

Passed _____, 20____

CITY OF BELPRE
ORDINANCE NO. 21 (2016-17)

**AN ORDINANCE ADOPTING CHAPTER 1151
OF THE CODE OF ORDINANCES OF
THE CITY OF BELPRE**

WHEREAS, it has come to the attention of the Belpre City Council that there are currently no specific provisions regulating telecommunication antennas and towers in the Belpre City Code of Ordinances; and

WHEREAS, the Belpre City Council has determined that such rules and regulations are required to protect the health and safety of Belpre City residents and the integrity of the Belpre City Zoning Code;

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

SECTION I

A new Chapter 1151 shall be enacted to create rules and regulations regarding telecommunication antenna and towers.

SECTION II

Belpre Chapter 1151 shall be enacted as follows:.

CHAPTER 1151: TELECOMMUNICATIONS ANTENNA, TOWER AND SITE REGULATIONS

Sections:

- 1151.01 Application of chapter**
- 1151.02 Definitions**
- 1151.03 Application procedure**
- 1151.04 Use regulations**
- 1151.05 Standards of approval of all cellular or wireless communications antennas and towers**
- 1151.06 Co-location of cellular and wireless communication towers**

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- 1151.07 Maintenance and tower operational standards
- 1151.08 Abandonment of towers, antennas and facilities
- 1151.09 Conditions of permit issuance

(§ 1151.01 APPLICATION OF CHAPTER.)

The regulations set forth in this chapter or set forth elsewhere in the Zoning Code, when referred to in this chapter, shall be the Telecommunications Antenna, Tower and Site Regulations.

§ 1151.02 DEFINITIONS.

As used in this chapter, the following terms shall have the meanings indicated:

ALTERNATIVE TOWER STRUCTURE. Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA. Any exterior apparatus designed for telephone, radio, television communications and any other electronic communicating devices or services through the sending and/or receiving of electro-magnetic waves.

APPLICANT. The person applying for a permit to place or operate a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site in the city.

CLEAR AND CONVINCING EVIDENCE. The measure of proof which will produce a firm belief as to the allegation sought to be established.

CO-LOCATION. The process of providing space for more than one user within a facility and/or on a tower.

EQUIPMENT BUILDING. The structure located on a tower site which houses the electronic receiving and relay equipment for a Wireless Telecommunications Facility.

EXISTING STRUCTURE. Any building or other structure other than a tower which can be used for location of wireless telecommunications facilities.

FEDERAL COMMUNICATIONS COMMISSION (FCC). The Federal government agency with the oversight of all aspects of communications including Broadcast, Radio, Broadcast TV, Television, Wireless, Telephone, Cellular, Radio, Public Safety and Cable TV.

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HEIGHT. Referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure even if said highest point is an antenna.

MICRO ANTENNAS. Any cellular or wireless communication antennas which consist solely of the antenna and which do not have any supporting structures other than brackets including micro cells. Micro antennas shall be equal or less than five feet in height and with an area of not more than 580 square inches.

MUNICIPAL OWNED PROPERTY. Property which is owned solely by the City of Belpre.

PERSON. Any business entity, person, individual, or telecommunications company or operator.

RIGHT-OF-WAY. The surface of the space above and below any public street, sidewalk, road, alley or highway including under or along bridges or viaducts or any other public right-of-way of any type whatsoever within the City.

SCREENING. The solid wood fence or barrier and continuous evergreen hedge which is required herein this chapter. Tower owners/operators are responsible for installation and maintenance of said screening.

TELECOMMUNICATION EQUIPMENT. Antennas, satellite dishes, and other communication devices and/or equipment which are used for transmitting, receiving, or relaying communications signals, except as such equipment has been preempted from regulation by the Telecommunication Act of 1996, or any subsequent amendment to or replacement of the Telecommunication Act of 1996.

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and alternative tower structures. The term shall exclude hobby-related communications facilities located in residential districts (i.e. Ham radio towers).

WIRELESS TELECOMMUNICATIONS FACILITIES. 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 an applicant seeks to locate or has installed upon a tower or existing structure.

§ 1151.03 APPLICATION PROCEDURE.

Any person wishing to place a cellular or wireless communications antenna or tower within the City, must attend an application conference with the Mayor, Safety Service Director, or their assignees. At this conference, the applicant must submit:

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- (A) Plot plan which shows all structures and identifies land usage within 500 feet of the security fence around the telecommunication tower.
- (B) A written report (2 copies) including a description of the tower proposed with technical reasons supports its design in relation to its proposed site.
- (C) Documentation establishing the structural integrity for the tower's proposed use.
- (D) General capacity of the proposed tower designed and the information necessary to assure that American National Standards Institute (ANSI) standards are met.
- (E) A statement of intent whether excess space will be leased to other telecommunication providers with notification of each lease to the Safety Service Director.
- (F) Proof of ownership of the proposed site or authorization to utilize it.
- (G) Application fee of \$250 plus actual costs incurred by the City for conducting any City Council special sessions. The \$250 shall be submitted in full at the time of applications, and in cases of applications for antennas, towers, or sites, an additional \$250 refundable deposit shall be made for the anticipated costs of conducting City Council special sessions.
- (H) Copies of any easements necessary.
- (I) The ground network, if any, served by the tower.
- (J) Copies of all certified mail announcements to other tower users must be attached to the application.
- (K) Type, size and location of any easement for buildings to be used by the tower for which the application is being submitted.
- (L) All structures shall be designed to meet or exceed the standards established by the Ohio Basic Building Code and the Ohio Board of Building Standards.
- (M) Plans must be sealed by a professional engineer registered in the State of Ohio.
- (N) A copy of the certificate of plan approval issued by the Ohio Department of Commerce, Division of Industrial Compliance.

§ 1151.04 USE REGULATIONS.

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The following use regulations shall apply to cellular or wireless communication antennas and towers;

(A) A cellular or wireless communications site may be permitted in business or industrial zoning districts only subject to the requirement set forth therein.

(B) Cellular or wireless communication sites in a business or industrial zoning district shall not be located any closer to any residential area than as follows:

Shall not be located any closer than 300 feet to any residential area. Any persons locating an antenna on City facilities shall be exempt from this requirement.

(C) A cellular or wireless communications antenna may be mounted to an existing structure, such as a communications tower (whether said tower is for cellular or wireless purposes or not), smoke stack, water towers or other tall structures in business or industrial zoning districts if a permit has been granted. Cellular or wireless communication antenna placed on the top of buildings must be less than 35 feet in height.

(D) Micro antennas not exceeding 35 feet in height may be placed on any building in a business or industrial zoning district. A micro antenna may be attached to any existing building located in an area described in the preceding sentence, and shall not be subject to the set back requirement of other cellular or wireless communication towers provided it is placed on the roof of an existing building.

(E) All other uses accessory to the cellular or wireless communication antennas and towers including, but not limited to business office, maintenance depots, and materials and vehicle storage, are prohibited from the site unless otherwise permitted in the zoning district in which the cellular or Wireless communications antenna and/or tower is located.

§1151.05 STANDARDS OF APPROVAL OF ALL CELLULAR OR WIRELESS COMMUNICATIONS ANTENNAS AND TOWERS.

The following standards shall apply to all cellular or wireless communications antennas and towers submitting application to the City assignees:

(A) The person shall demonstrate, using the latest technological evidence, why the antenna or tower must be placed in a proposed location in order to serve its necessary function in the company's grid system. Part of the demonstration shall include a drawing showing the boundaries of the area around the proposed location which would probably also permit the antenna to function properly in the company's grid system. The area shall be considered the allowable zone.

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(B) If the person proposes to build a cellular or wireless communications tower (as opposed to mounting the antenna on an existing structure), the person is required to demonstrate that the person has contracted the owners of nearby tall structures within the zoned district, asked for permission to install the cellular communications antenna on those structures, and was denied for either non-economic reasons or that a clearly unreasonable economic demand was made by the owner, based on prevailing market values. "Tall Structures" shall include, but not be limited to: smoke stacks, water towers, buildings over 35 feet in height, antenna supporting structures or other cellular or wireless communication companies, other communication towers. The City may deny the application to construct a new cellular or wireless communication tower if the applicant has not made a good faith effort to mount the antenna on an existing structure. All antennas and towers must be designed to withstand wind speeds of at least one hundred (100) miles per hour.

(C) The applicant shall demonstrate that the antenna/tower is no higher than necessary to function satisfactorily and to accommodate the co-location requirement. No antenna that is taller than the necessary height shall be approved. Cellular or wireless towers shall be monopole construction unless it is demonstrated that another type of tower is required for safety purposes.

(D) If a new cellular or wireless tower is to be constructed in an industrial zoned district, the minimum distance between the base of the tower or any guy wire anchors and any property line which abuts a zoning district other than a residential area shall be no closer than the greater of the following:

- (1) 40% of the tower height**
- (2) 50 feet of the property line.**

(E) (1) All cellular or wireless communications towers shall be fitted with anti-climbing devices as approved by the manufactures. The person applying shall demonstrate that the proposed cellular or wireless communication tower and its antenna are safe and that the surrounding properties will not be negatively affected by tower failure, falling ice, or other debris, electromagnetic fields or radio frequency interference. However, if a specific safety issue in question is determined to be regulated by either FCC regulations or applicable Building code regulations, and the operation or construction is in compliance with such regulations, then this requirement for safety shall be deemed to have been met.

(2) If the installation and/or the operation of the cellular or wireless communication tower site is determined by City Council, upon presentation of proper and sufficient documentation; and after a public hearing, that the operation of a cellular or wireless communications tower is inherently dangerous or is a demonstrable health hazard, the cellular or wireless tower shall be declared to be a nuisance and all operation shall cease.

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(F) An enclosed Wood fence shall be required around the cellular or wireless communication tower and its support structure(s) unless the antenna is mounted on an existing structure. The enclosed wood fence shall be a minimum of eight feet in height and shall be painted forest green and maintained yearly for appropriate upkeep to city standards evaluated by City Safety Service Director at the time of the annual City Regulations submittal.

(G) Landscaping in compliance with a plan approval by the City Safety Service Director shall be provided to screen as much of the support structure and ground level features as possible and such landscaping shall be maintained and is subject to annual review during the Annual Registration Process, January 1 of each year. In addition, existing vegetation (such as trees and bushes) on and around the site shall be preserved to the greatest extent possible.

§ 1151.06 CO-LOCATION OF CELLULAR AND WIRELESS COMMUNICATION TOWERS.

(A) In order to reduce the number of antenna support structures needed in the City in the future, the owner of an existing cellular or wireless communications tower shall not unreasonably deny a request to accommodate other uses, including other cellular or wireless communication companies, and the antenna of local police, fire and EMS department needs. The owner of the existing cellular or wireless communications tower may request reasonable compensation for the use of the tower.

(B) For the purpose of encouraging co-location of cellular and wireless antenna and other uses, cellular or wireless communication towers shall be designed, engineered, and constructed as follows, unless waived for good cause to minimize impact on adjoining property by the Mayor and City Safety Service Director.

(1) Towers less than 75 feet tall shall be designed, engineered and constructed to handle one or more cellular or wireless communications service users;

(2) Towers more than 75 feet in height but less than 150 feet shall be designed, engineered and constructed to support antennas installed by two or more wireless communication service users; and

(3) Towers 150 feet in height or taller shall be designed, engineered and constructed to support antennas installed by three or more cellular or wireless communications service users.

(C) As used in the above three points, the term USERS shall include the antennas of police, fire and EMS departments. These governmental entities shall not be considered "users" until their respective telecommunications antennas and equipment are placed on the tower and a fee agreement for carriage has been negotiated and approved by City Council. In addition, an applicant must demonstrate that the area

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acquired for the use and construction of the cellular tower and accessory structures is sufficient in size to accommodate any additional structures that may be required if additional users are added to the tower.

§ 1151.07 MAINTENANCE AND TOWER OPERATIONAL STANDARDS.

(A) The person applying to the City must demonstrate that the person is licensed by the FCC. The owner of the tower must also annually provide at the January 1 Registration process each year, a list of all users with addresses, names and phone numbers of responsible management personnel of the tower. Each user shall provide the City with a copy of each user license with the FCC. No approval will be granted to any application unless proof of current FCC license for proposed use of the tower is provided.

(B) Adequate parking shall be required for users of the tower such as maintenance personnel. If the site is not fully automated, the number of required parking spaces shall equal the number of employees working on the largest shift.

(C) Cellular or wireless communications towers under 200 feet in height shall be painted silver or have a galvanized finish retained in order to reduce visual impact. Any cellular or wireless communication tower shall meet all Federal Aviation Administration (FAA) regulations. No cellular or wireless communication tower may be artificially lighted except when required by the FAA. No signage is allowable on cellular or wireless communication tower or antenna or accessory buildings and structures. All utility lines serving the towers shall be underground.

(D) The owners of property used as a cellular or wireless communications site shall maintain such property and all structures in good condition and free of trash, outdoor storage, weeds and other debris. Any owner of a cellular or wireless communication tower shall be required to notify the Mayor and Safety Service City Engineer of its intent in writing within 30 days of its cessation of business, its discontinuance of service, or any transfer merger or acquisition of ownership.

§ 1151.08 ABANDONMENT OF TOWERS, ANTENNAS AND FACILITIES.

(A) (1) Upon abandonment of towers and antennas by person providing tower, any person providing a tower shall present a report to the City Safety Service Director, or his designee, notifying them of any tower facility located in the City whose use will be discontinued for 120 days. The City Safety Service Director may then declare the facility abandoned. (This excludes any dormancy period between construction and the initial use of the facility.) Discontinued shall mean that the structure has not been properly maintained, has been abandoned, become obsolete, is unused or has ceased the daily activities or operations which has occurred. The facility's owner/operator will receive

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written notice from the City Law Director and City Safety Service Director, and be instructed to either reactivate the facility's use within 120 days or dismantle and remove the facility. If re-activation or dismantling does not occur, the City will remove or will contract to have removed the facility and assess the owner/operator the costs.

(2) The City must provide the person owning the tower three months notice to be heard before the Planning Commission before initiating such action. After such notice has been provided, the City shall have the authority to initiate proceedings to either acquire the tower and any appurtenances attached thereto at the then fair market value, or in the alternative, order the demolition of the tower and all appurtenances.

(3) The City shall provide the tower owner with the right to a public hearing and shall follow the three month notice required in the above mentioned paragraph. All interested parties shall be allowed an opportunity to be heard at the public hearing.

(4) After a public hearing is held, the Planning Commission shall make its recommendation to City Council, at which time City Council, may order the acquisition or demolition of the tower. The City will require tower applicants to pay for all expenses necessary to acquire or demolish the tower.

(B) No cellular or wireless communication tower shall be constructed, replaced or altered without obtaining the applicable building permit from the City of Belpre and State of Ohio.

§ 1151.09 CONDITIONS OF PERMIT ISSUANCE.

As used in this chapter, the person granted a permit will adhere to:

(A) The person obtaining a granted permit by the City of Belpre shall maintain public liability and property damage insurance that protects the person granted the permit and the City; naming the City as an additional insured. The City's officers and agents and employees shall also be named as an additional insured. The insurance shall provide coverage at all times of not less than one million dollars (\$1,000,000) for personal injury to each person and one million dollars (\$1,000,000) for each occurrence involving property damage plus costs of defense. The policy shall provide that the insurance shall not be canceled or materially altered without 30 days written notice first being given to the City Safety Service Director and City Law Director. If the insurance is canceled or materially altered within the terms of this agreement, the person granted this permit shall provide a new policy with the same terms. The person granted the permit also will agree to maintain continuous uninterrupted coverage in the amounts required for the duration of the permit held with the City.

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(B) The person granted a permit shall maintain on file with the City Auditor a certificate of such insurance as enumerated in section (A) above. Failure to maintain insurance coverage or to provide proof of insurance shall constitute a violation of this chapter and grounds for revocation of a permit.

(C) A performance bond of \$25,000.00 in conformity with this chapter. The applicant, facility operator, or both shall provide the Safety Service Director or his designee, upon request with proof that the bond is in force. Failure to maintain such performance bond in force or to provide proof of bonding shall constitute a violation of this chapter and grounds for revocation of a permit.

(D) In the case of a leased site, a lease agreement which shows on its face that it does not preclude the site owner from entering into leases of the site with other providers.

(E) A copy of the person and/or company who will be the applicant applying for the permit license issued by the FCC.

(F) A copy of the findings from the FAA's Aeronautical Study Determination regarding the proposed wireless communication support structure siting.

SECTION III

This Ordinance is hereby declared to be an emergency ordinance necessary for the public peace, health, safety and welfare of the City, and for the further reason that no regulations or rules currently exist to limit the erection and maintenance of telecommunication antenna and cell towers within the City of Belpre, which creates an immediate risk to the health, safety and welfare of the citizens of the City of Belpre. Wherefore, this Ordinance shall be in full force and take effect immediately after its passage by Council and signing by the Mayor.

PASSED: August 28, 2017 _____
PRESIDENT OF COUNCIL

ATTEST: Kimberly S. Mauklett _____

PRESENTED TO MAYOR: 8/28/17 _____
MAYOR

APPROVED BY MAYOR: 8/28/17 _____

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CLERK'S CERTIFICATION OF PUBLICATION

The undersigned Clerk of the Council of the City of Belpre, Ohio, does hereby certify that on August 28, 2017 this Ordinance was published by posting a copy of the same at the five public places designated by the City Council in Ordinance No. 18 (2006-07).

August 28, 2017
Date

Kimberly S. Mendith
CLERK

