

Section 560 - Zoning: additional requirements

560.01. Additional requirements. Subdivision 1. Height. Height limitations as set forth in all zoning districts may be increased by 50% when applied to the following:

- a) antennas in residential districts (Amended Ord.91-672)
- b) belfries
- c) church spire and steeples
- d) cooling towers
- e) elevator penthouse
- f) flag poles
- g) smoke stacks
- h) water towers

Subd. 2. Excess. Heights in excess thereof for such purposes may be permitted only by a conditional use permit. (Amended Ord. 91-672)

560.02. Tower approval. Subdivision 1. Towers may not be constructed in an industrial zoning district unless such use is a conditional use in the zoning district in which construction is proposed.

Subd. 2. Conditional use permit. Towers may not be constructed in an industrial district unless a conditional use permit has been issued by the city council.

Subd. 3. Building permit. Towers may not be constructed in an industrial district unless a building permit has been issued by the building official.

Subd. 4. City property. The city may authorize the use of city property for towers in accordance with the procedures of this code.

Subd. 5. Zoning districts. A tower is not a permitted use in any zoning district.

Subd. 560.03. Towers. Subdivision 1. A tower may be permitted as a conditional use in the industrial zoning districts only. In order to be eligible for a conditional use permit, the applicant must demonstrate that a newly constructed tower is necessary because co-location on an existing tower is not feasible. The following are the application requirements:

- a) A completed application including the following:
 1. name, address, and telephone number of the applicant;
 2. name, address, and telephone number of the owner(s) of the property on which the tower is proposed to be located;
 3. legal description of the parcel on which the tower is proposed to be located;
 4. written evidence of approval, easement or license for the proposed tower from the property owner(s) to the applicant;

b) A site plan shall be submitted. This plan will be a scaled, surveyed site plan indicating the location, type and height of the proposed tower, the existing land uses and zoning of the subject parcel, all building uses with 300 feet of the proposed facility, adjacent roadways, proposed means of access, setbacks from property lines, drawings of the proposed tower showing elevation and other structures, topography, parking, and depicting the proposed tower design.

c) Each applicant shall provide evidence and demonstrate the applicant has made written contact with all wireless service providers who supply service within a quarter mile of the proposed tower. The applicant shall inquire about potential collocation opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter (s) as well as responses(s) shall be presented to the City as a means of demonstrating the need for a new tower.

d) Documentation such as coverage maps showing the need for a tower at the proposed site in order to close a gap in the applicant's wireless telecommunication service or a gap in the service provided by a person intending to place wireless communications facilities on the tower.

e) A structural engineering report certifying that the tower will have a wind load capability equaling three (3) times the maximum wind load capacity necessary to support the first provider's wireless communications facilities, the ability of the tower to accommodate co-location totaling three (3) wireless service providers wireless communications facilities and a statement by the applicant affirming its intent to accommodate the collocation of additional wireless communications facilities for future users.

f) A landscape plan showing specific landscape material, method of fencing, finished color and, if applicable, the method of camouflage and lighting.

g) Representation of the visual impact of the proposed tower as follows:

1. Photographs taken from the periphery of the subject area from the north, south, east, and west of the proposed tower.
2. Each of the existing condition photographs shall have the proposed tower superimposed on it to show what will be seen after tower construction.

h) A fee established by resolution by the City Council that shall cover the reasonable costs of application process and review. The applicant shall also reimburse the City for the reasonable cost of a review by a radio frequency (RF) engineer, other technical review as needed and/or legal counsel retained by the City.

i) Other information deemed by the planning department to be necessary.

Subd. 560.04. Performance Standards. Subdivision 1. The following are the performance standards for towers, antennas, and equipment shelters:

a) The location of towers, antennas, and equipment shelters shall comply with all natural resource protection established in the zoning ordinance.

b) Security fencing ten feet in height shall surround the tower and equipment shelter, either completely or individually as determined by the City Council and approved in the site plan.

c) Equipment shelters and structures accessory to a tower and antenna must be designed to blend in and be compatible with the surrounding environment and neighboring uses and to meet such setback requirements as are compatible with the actual placement of the tower. Ground mounted equipment must be screened from view with suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood. Equipment shelters shall be placed underground if physically feasible.

d) Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.

e) The tower shall be painted a non-contrasting gray or similar color minimizing its visibility, unless otherwise required by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA).

f) The use of any portion of a tower for signs other than warning or equipment information is prohibited.

g) Towers may be located closer to the property line of the parcel on which the tower is located than the height of the tower only if adjoining properties are used for a use that the City Council finds will not be affected by a tower collapse: (i.e. rail road right-of-way, lake, creek, unbuildable land).

h) Towers shall be built to structurally accommodate the maximum number of foreseeable uses technically practicable.

i) One tower is allowed per site.

j) Towers shall be designed to ensure that visual intrusiveness and impacts on nearby properties is mitigated to the greatest extent feasible.

k) Towers must be designed and certified by an engineer to be structurally sound and in conformance with the Uniform Building Code, and any other standards set forth in this code.

l) Towers may not be artificially lighted except as required by the Federal Aviation Administration. If so required, lighting shall be of a type, color, and intensity so as to minimize visual intrusiveness, particularly at night.

m) Towers must be self-supporting without the use of guys, wires, cables, beams or other means. Towers must be a monopole design.

560.05. Sole Use. Subdivision 1. Wireless communications facilities proposed as a sole use on any lot in an industrial zoning district are subject to the following conditions:

a) The lot must meet the minimum lot size for the district.

b) The minimum distance from any tower to any R-1 zoning district shall be the height of the tower plus 100 feet. Towers shall have a minimum setback from any other zoning district equal to the height of the tower plus 10 feet, unless otherwise provided in the ordinance. Setbacks are measured from the base of the tower to the property line of the parcel on which it is located.

- c) Equipment shelters shall comply with the minimum setbacks for the district.
- d) Maximum height:
 - Tower: 75 feet measured from grade
 - Equipment shelter: 10 feet
- e) Maximum size of equipment shelter – 200 square feet for a single shelter, or, if there is more than one, 400 total square feet. Equipment shelters shall be placed under-ground if physically feasible.
- f) The wireless communications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).

560.06. Combined with another use. Subdivision 1. A wireless communications facility is permitted on a lot in an industrial zoning district together with an existing use subject to the following conditions:

- a) The existing use on the lot may be any permitted use in the district or any lawful nonconforming use, and need not be affiliated with the wireless telecommunications provider. The wireless communications facility will not be considered an addition to the structure or value of a nonconforming use.
- b) The wireless communications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).
- c) The minimum lot area shall be the area needed to accommodate the tower (and guy wires, if used), the equipment shelter, security fencing and buffer planting.
- d) The minimum distance from any tower to any R-1 district lot line shall be the height of the tower plus 100 feet. Setbacks are measured from the base of the tower to the property line of the parcel on which it is located. Towers shall have a minimum setback from any other zoning district equal to the height of the tower plus 10 feet, unless otherwise provided in the ordinance. Setbacks are measured from the base of the tower to the property line of the parcel on which it is located.
- e) Equipment shelters shall comply with the minimum setback requirements for district.
- f) Access – the service access to the equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
- g) Maximum height:
 - Tower: 75 feet measured from grade.
 - Equipment Shelter: 10 feet
- h) Maximum size of equipment shelter – 200 square feet for a single shelter, or if there is more than one, 400 square feet. Equipment shelters shall be placed underground if physically feasible.

i) All ground equipment shall be housed within an existing structure whenever possible. If an equipment shelter is necessary, it shall be situated as to be screened from view by landscaping.

Subd. 560.07. Wireless telecommunications antennas. Subdivision 1. Wireless telecommunications antennas attached to existing buildings or structures are permitted in Business, Institutional, Business Park, and Industrial zoning districts. Wireless telecommunications antennas are not permitted in R-1 zoning districts. In applying for a building permit for a wireless telecommunications antenna, the applicant must present substantial evidence as to why it is not technically feasible to co-locate. Once those efforts have been exhausted, a wireless telecommunications antenna may be located on an existing building or structure subject to the following conditions.

a) Maximum height 20 feet above the existing building or structure.

b) Wireless telecommunications antennas attached to a public facility, such as a water tower, shall be integrated with the design, material, shape and color of, and shall not be visibly distinctive from, the public facility.

c) If the applicant proposes to locate wireless communications facilities in an equipment shelter (not located in, attached to, or on top of the building), the shelter shall comply with the following:

1. The minimum setback requirements for the subject zoning district.
2. A buffer yard may be planted in accordance with section 560.02c.
3. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
4. The maximum size of the equipment shelter shall not exceed 200 square feet, or, if there is more than one, 400 square feet.
5. Up to four providers may be allowed on an existing building or structure.
6. Maximum height 10 feet.
7. Equipment shelters shall be placed underground if physically feasible.

Subd. 560.08. Antennas in residential zoning districts. Subdivision 1. Wireless communications facilities that include towers are not permitted in residential zoning districts. Wireless telecommunications antennas are not permitted in R-1 zoning districts. Antennas attached to existing buildings or structures are permitted in R-2, R-3, R-4, R-5, and R-6 zoning districts. In applying for a building permit for a wireless telecommunications antenna in any such residential district, the applicant must present substantial evidence as to why it is not technically feasible to be located in a more appropriate nonresidential zone. Provided that is demonstrated, a wireless telecommunications antenna may be located in an R-2, R-3, R-4, R-5 or R-6 zoning district subject to the following conditions:

a) Combined with a nonresidential use. An antenna may be attached to a nonresidential building or a structure that is a permitted use in the district; including, but not limited to a church, a municipal or governmental building or facility, and a building or structure owned by a utility. The following conditions shall be met:

- 1) Maximum height: 20 feet above the existing building or structure.
- 2) If the applicant proposes to located the wireless communications equipment in a separate equipment shelter, the equipment shelter shall comply with the following:
 - i) The equipment shelter shall comply with the minimum setback requirements for the subject zoning district.
 - ii) The maximum size of the equipment shelter shall not exceed 200 square feet, or if there is more than one, 400 total square feet.
 - iii) A buffer yard shall be planted in accordance with section 560.02 c
 - iv) Vehicular access to the equipment shelter shall not interfere with the parking or vehicular circulation on the site for the principal.
 - v) The antenna shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance.
 - vi) Maximum height 10 feet.
 - vii) Equipment shelters shall be placed underground if physically feasible.

b) Antennas located on residential buildings. An antenna for a wireless communications facility may be attached to a mid-rise or high-rise apartment buildings only in the R-2 – R-6 zoning districts subject to the following conditions:

- 1) Maximum height: 20 feet above the existing building.
- 2) If the applicant proposes to locate the wireless communications equipment in a separate equipment shelter (not located in, attached to, or on top of the building), the shelter equipment shall comply with the following:
 - i) The equipment shelter shall comply with the minimum setback requirements for the subject zoning district.
 - ii) The maximum size of the equipment shelter shall not exceed 200 square feet, or if there is more than one, 400 total square feet.
 - iii) A buffer yard shall be planted in accordance with section 560.02c.
 - iv) Vehicular access to the equipment shelter shall, if all possible, use the existing circulation system.
 - v) The antenna shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance.

- vi) Up to four providers may be allowed on an existing building.
- vii) Maximum height 10 feet.
- viii) Equipment shelters shall be placed underground if physically feasible.

560.09. Abandoned antennas, and towers removal. Subdivision 1. Abandoned or unused towers, antennas, and associated wireless communications facilities must be removed within ninety days of the cessation of operations of the wireless communications facility at the site unless an extension is approved by the City Council. Tower foundations shall be removed to eighteen (18) inches below grades. Should the owner of any tower fail to remove the tower within ninety (90) days of cessation of operation, such tower is declared to be a public nuisance and may be removed by the city, and the costs of removal, may be assessed against the lot on which the tower is located, pursuant to Minnesota Statute Chapter 429 and the Hopkins City Code. The conditional use permit for any tower shall establish an amount to be posted by bond, letter of credit, cash or equivalent by the applicant that will cover the projected cost of removal of towers, antennas, and equipment shelter/cabinet in the event of abandonment.

560.10. Right-of-Way. Subdivision 1. Except by prior written approval of the city, no part of any tower or wireless communications facilities, nor any line, cable, equipment, accessory buildings, wires or braces shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk or property line.

Subd. 2. Height. An antenna attached to an existing pole in the right-of-way cannot exceed a combined height of 40 feet.

560.11. Structural Inspections. Subdivision 1. The city may conduct inspections at any time, upon reasonable notice to the property owner and the tower owner to inspect the tower for the purpose of determining if it complies with the Uniform Building Code and other construction standards provided by the city code, federal and state law. The City's expense related to such inspections will be borne by the tower owner or property owner. Based upon the results of an inspection, the building official may require repair, modification or removal of a tower.

560.12. Radiation Emission Inspections. Subdivision 1. The owner of a tower or wireless communications facility shall annually provide the City with current technical evidence of compliance with FCC {OET-65} radiation emission requirements no later than December 31 of each calendar year.

560.13. Maintenance. Subdivision 1. Towers and wireless communication facilities must be maintained in accordance with the following provisions:

a) Tower owners must employ ordinary and reasonable care in construction and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public.

b) Owners must install and maintain towers, wireless communications facilities, wires, cables, fixtures and other equipment in compliance with the requirements of the National Electric Safety Code and all FCC, State, and local regulations, and in such a manner that they will not interfere with the use of other property.

c) Towers, wireless communications facilities, and antenna support structures must be kept and maintained in good condition, order, and repair.

d) Maintenance or construction on a tower, wireless communications facilities or antenna support structure must be performed by qualified maintenance and construction personnel.

e) All users of any tower must comply with radio frequency emissions standards of the FCC (OET-65) and provide proof of compliance annually by written report certified by an engineer. If the permittee fails to submit timely proof of compliance annually, the city may retain its own engineer to test for compliance. The provider shall reimburse the city for its costs in carrying out the tests.

f) If the use of a tower is discontinued by the tower owner, the tower owner must provide written notice to the City of his intent to discontinue use and the date when the use will be discontinued.

560.14. Failure to Comply; Permit Revocation. Subdivision 1. If the tower owner fails to comply with any provision of the city code, federal or state law, the applicable permit or conditional use permit requirements, the city may impose penalties for noncompliance, or it may revoke the conditional use permit in accordance with the following provisions.

Subd 2. Except as provided in subdivision 3 below, a conditional use permit revocation shall be preceded by written notice to the permittee of the alleged violation(s), the opportunity to cure the violation(s) during a period not to exceed thirty (30) days following receipt of the written notice and a hearing before the city council at least fifteen (15) days after receiving written notice of the hearing. The hearing shall provide the permittee with an opportunity to show cause why the conditional permit should not be revoked.

Subd. 3. If the city finds that exigent circumstances exist requiring immediate conditional use permit revocation, the city may revoke the permit and shall provide a post-revocation hearing at least fifteen (15) days after permittee's receipt of written notice of the hearing.

Subd. 4. Any decision to revoke shall be in writing and supported by substantial evidence contained in a written record.

560.15. Insurance. Subdivision 1. The tower owner shall provide evidence satisfactory to the City that its tower and wireless communication facilities thereon are adequately insured for injury and property damage. Upon request, the holder of a conditional use permit issued under this chapter shall submit to the zoning administrator a photocopy of a certificate of insurance showing that the tower or wireless communications facility is insured for that calendar year.

560.16. Variances. Subdivision 1. Variances from the requirements of this Ordinance may be granted by the City Council only as provided below:

Subd. 2. A variance may be granted if the applicant shows by clear and convincing evidence that the applicant, its tenants cannot meet reasonable service quality needs of wireless telecommunications users in the city without a variance from the requirements of this ordinance.

Subd. 3. If the applicant makes the showing required by Subd. 2., the applicant shall demonstrate and the City Council must consider the following additional factors in determining whether to grant a variance:

- a) Whether there are exceptional or unique circumstances that apply to the property because of lot size or shape, or topography, or other circumstances over which the owners of the property have no control;
- b) Whether special conditions or circumstances exist that were not created by the applicant or the owner of the property or their predecessors;
- c) Whether the variance would be detrimental to the public or to the owners of other property in the vicinity; and
- d) Whether the variance requested is the minimum variance that would alleviate the hardship.

Subd. 4. A variance will be granted only in instances where the strict enforcement of the requirements of this ordinance would cause undue hardship or a determination is made that denial of a variance under the facts presented would be contrary to law. Economic consideration alone will not constitute an undue hardship if reasonable use of the property exists under the terms of this ordinance.

(Revised Sections 560.02 through 560.16 Ord. 03-902)

560.17 Portable storage unit(s) are allowed in all districts for temporary storage during construction and/or remodeling. Such units shall be removed immediately upon issuance of a certificate of occupancy or final building permit inspection, whichever applies. Public storage units may also be used for not longer than 30 consecutive days in conjunction with moving and relocation activities. Portable storage units shall not be placed in the public right-of-way. (Added Ord. 03-898)

560.18. Front yard variance. In any R district, wherever a platted block or otherwise subdivided area has dwellings located on 50% or more of the parcels located between two streets, the front yard set-back line may be reduced below the minimum which would be therein required, but shall in no case be less than either the average front set-back lines already established by the dwellings located in such block or area or 15 feet which ever is greater.

560.19. Frontage. No residence shall hereafter be erected upon any lot unless such lot abuts upon an improved public right-of-way for at least 35 feet and provides access to the lot from this right-of-way unless it is located within an approved P.U.D. The access to a lot may be only 20 feet in width from a public right-of-way. (amended Ord. No. 94-742)

560.20. Farming operations. All farms in existence on August 11, 1966 may continue operation subject to the following conditions:

- a) Agriculture, except commercial animal farms, fur farms, kennels and poultry farms, but including truck gardening and other horticultural uses is a permitted use in any district in which such existing operation is located.
- b) Sale of products produced may be conducted on the premises from a roadside stand, which stand may be located within the front yard during harvest season only.

560.21. Sewer and water. Dwellings on lots in any district not served by public sewer and water shall not be permitted on any parcel or lot having less than 15,000 square feet and a width of 100 feet.

560.22 Height. Additional height in the R-4 and R-5 district not in excess of 11 story or 110 feet, whichever is higher, may be permitted by approval of a conditional use permit provided such structure is located 300 feet or more from any R-1 district boundary line.