

RESOLUTION NO. 177-2016

A RESOLUTION AMENDING AND CREATING THE SECTIONS PERTAINING TO THE REGULATION OF WIRELESS COMMUNICATION FACILITIES LISTED BELOW OF THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE (JULY 9, 2009 EDITION), AS ADOPTED BY REFERENCE BY SEDGWICK COUNTY RESOLUTION NO. 137-09.

WHEREAS, the Board of County Commissioners (“Board”) is authorized by K.S.A. 12-741 et seq. to adopt zoning regulations for the unincorporated area of Sedgwick County, Kansas, upon the recommendation of the Wichita-Sedgwick County Metropolitan Area Planning Commission (“MAPC”); and,

WHEREAS, upon the recommendation of the MAPC the Board has adopted by Resolution No. 137-09 a standard code entitled the “Wichita-Sedgwick County Unified Zoning Code, July 9, 2009 Edition” (the UZC); and,

WHEREAS, the MAPC has held public hearings as required by law and has made recommendations to the Board for the amendment of such regulations; and,

WHEREAS, the Board desires to adopt the recommendations of the MAPC and to enact and adopt the recommended amendments to the UZC; and,

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS;

SECTION 1. The Board hereby adopts and enacts the new sections of the UZC set out in Section 3 of this Resolution. Except as amended hereafter, the remainder of the UZC shall remain in effect.

SECTION 2. The Board finds that notice of public hearing of the amendments was published once in the official county paper as required by K.S.A. 12-757; and a public hearing was held by the Wichita-Sedgwick County Metropolitan Area Planning Commission on September 29, 2016.

SECTION 3. The following sections of the UZC, as identified, are created as follows:

Article II, Section II-B.14.p [in the unincorporated area of the County].:

- p. **Wireless Communication** means personal wireless services and personal wireless service facilities as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through a Wireless Communication Facility or any fixed or mobile wireless services provided using a Wireless Communication Facility.

Article II, Section II-B.14.q [in the unincorporated area of the County].:

- q. **Wireless Communication Facility** means a Lot containing equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) a wireless support structure consisting of a freestanding support structure, such as a monopole, guyed, or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities; (B) a base station that supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics; (C) equipment associated with wireless services such as private, broadcast and public safety services, as well as

unlicensed wireless services and fixed wireless services such as microwave backhaul; and/or (D) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

Article III, Section III-D.6 [in the unincorporated area of the County].:

- 6. Supplementary Use Regulations.** No permit shall be issued for any Development or Use of land unless the activity is in compliance with all applicable supplementary use regulations specified in this section, or unless the supplementary use regulations have been modified or waived by the Governing Body pursuant to the Development Review Procedures contained in Article V. The supplementary use regulations of this section are not applicable to Lots in the AFB Air Force Base District. In the case of conflict with zoning District property Development standards or other regulations of this Code, the more restrictive requirement shall apply, unless otherwise specifically provided.

Article III, Section III-D.6.g [in the unincorporated area of the County].:

- g. Wireless Communication Facility.** Whether allowed by right, subject to a Building Permit, by Administrative Permit, by CUP adjustment/amendment, by P-O adjustment/amendment or by Conditional Use approval, a Wireless Communication Facility shall be subject to the following provisions.
- (1)** A Wireless Communication Facility shall be evaluated in terms of conformance to the guidelines in the "Wireless Communication Master Plan" as adopted by the Governing Body, and applications for such facilities shall include information for review as required in that Plan.
- (2)** A following Wireless Communication Facility is permitted by right in any zoning District, subject to the issuance of a Building Permit, if it conforms to the Location/Design Guidelines in that Plan:
- (a)** new facility that is concealed in or mounted on top of or the side of existing buildings (excluding single-family and duplex residences) and other Structures, including support structures up to 20 feet above the Building or the maximum height permitted by a Building Permit or an Administrative Permit in the underlying zoning District, whichever is greater;
  - (b)** modification and/or replacement of support structures (light poles, flag poles, electrical poles, private dispatch towers, etc.) that are not significantly more visible or intrusive, including cumulative height extensions of up to 25 percent above the original Structure height;
  - (c)** modification and/or replacement of a Wireless Communication Facility, including cumulative height extensions of up to 25 percent above the original structure height that comply with the compatibility height standards as outlined in Sec. IV-C.5;
  - (d)** new or modified lattice towers no larger than 18 inches wide on any side up to 80 feet in height measured from grade.
  - (e)** small cell facility or distributed antennae system located in an interior Structure or upon the site of any campus, stadium, or athletic facility.

If the Zoning Administrator determines that the Wireless Communication Facility does not conform to the Location/Design Guidelines, the Building Permit shall be denied.

Denied Building Permits may be appealed by applying for an Administrative Permit or a Conditional Use. An Administrative Permit shall be approved subject to conditions that maintain conformance with the Location/Design Guidelines. A Wireless Communication Facility that does not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant.

- (3)** A Wireless Communication Facility shall be approved by Administrative Permit in any zoning District, under the procedures in Sec. VI-G.9 and Sec. VI-H.5, if it conforms to the Location/Design Guidelines in the "Wireless Communication Master Plan" and, for zoning Lots located within the City, is designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map" of Sec. I- L.:
- (a)** new disguised ground-mounted facilities up to 85 feet in height;
  - (b)** new undisguised ground-mounted facilities up to 65 feet in the SF- 10, SF-5, TF-3, MF-18, MF-29, B and MH zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.;
  - (c)** new undisguised ground-mounted facilities up to 85 feet in the NO, GO and NR zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.;
  - (d)** new ground-mounted facilities up to 120 feet in height in the RR, SF- 20, U , LC, OW, and GC zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.; or
  - (e)** New ground-mounted facilities up to 150 feet in height in the IP, CBD, LI and GI zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.

If the property on which the facility is located is within a CUP or P-O, the Administrative Permit shall also be considered as an application for an adjustment of the CUP or P-O as outlined in Sec. V-E.14, excluding the requirement of V-E.14.a, or Sec. V-C.14, excluding the requirement of V-C.14.a., as applicable.

- (4)** A Wireless Communication Facility that does not meet the requirements of Sec. III-D.6.g(2) or Sec. III-D.6.g(3) shall be reviewed through the Conditional Use process as outlined in Sec. V-D or, if the property on which the facility is located is within a CUP or P-O, as an amendment to the CUP or P-O as outlined in Sec. V-E.13. or Sec. V-C.13, as applicable.
- (5)** There shall be no nighttime lighting of or on a Wireless Communication Facility except for aircraft warning lights or similar emergency warning lights required by applicable governmental agencies. Flashing white obstruction lights shall not be permitted for nighttime operation. Lighting for security purposes shall be permitted at the base of wireless communication facilities. Temporary lighting for nighttime repairs shall be permitted.
- (6)** No signs shall be allowed on a Wireless Communication Facility other than those required by applicable governmental agencies.

- (7) Unused facilities, including the uppermost 20 percent of support structures that are unused (except where removal of the uppermost 20 percent would require the removal of a lower portion the support structure that is in use, in which case the required removal will be raised to the next highest portion of the support structure not in use), shall be removed by the owner within 60 days if the Wireless Communication Facility, or portion thereof, has been unused for 12 consecutive months. If such a facility or portion of a facility is not removed by the owner, then the City or County may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove it, and after removal may place a lien on the subject property for all direct and indirect costs incurred in its dismantling and disposal, including court costs and reasonable attorney fees. Under this paragraph, "owner" shall include both the Owner of the real property and the owner of the Wireless Communication Facility, whether such ownership is divided or in the same person.
- (8) All Wireless Communication Facilities shall comply with all federal, state, and local rules and regulations.

Article IV, Section IV-C.5 [in the unincorporated area of the County].:

- 5. Compatibility Height standards.** The following Height standards shall apply to Development that is subject to compatibility standards, unless reduced or waived through the provisions of Sec. V-I.2. No Structure shall exceed 35 feet in height within 50 feet of the lot line of property zoned TF-3 or more restrictive. Structures located more than 50 feet from the Lot Line of property zoned TF-3 or more restrictive may increase Height (if permitted by the base District regulations) at a ratio of one foot in Height for each three feet of Setback beyond 50 feet. For example, a Structure limited to 35 feet in Height at 50 feet from the Lot Line of property zoned TF-3 or more restrictive could be increased to a Height of 85 feet at a distance of 200 feet from the Lot Line of property zoned TF-3 or more restrictive.

Article VI, Section VI.G.9 [in the unincorporated area of the County].:

- 9. Administrative Permits.** The Planning Director, with the concurrence of the Zoning Administrator, shall have the authority to approve, approve with conditions or modifications, or deny applications for a Wireless Communication Facility pursuant to Sec. III-D.6.g. The Planning Director's decision on such an application may be appealed by filing an application for a Conditional Use.

Article VI, Section VI.H.5 [in the unincorporated area of the County].:

- 5. Administrative Permits.** The Zoning Administrator shall have the authority to review and recommend to the Planning Director approval, approval with conditions or modifications, or denial of applications for a Wireless Communication Facility pursuant to Sec. III-D.6.g. An Administrative Permit for a Wireless Communication Facility may be granted by the Planning Director only with the concurrence of the Zoning Administrator.

Article VI, Section VI-B.7 [in the unincorporated area of the County].:

- 7. Zoning Adjustments.** The Governing Body shall have the authority to approve, approve with conditions or modifications, or deny zoning adjustments when requested in association with an application to amend the Official Zoning Map, an application for Community Unit Plan approval, or an application for Conditional Use approval.

Article VI, Section VI-C.7 [in the unincorporated area of the County].:

**7. Zoning Adjustments.** The Planning Commission shall have the authority to approve, approve with conditions or modifications, or deny zoning adjustments when requested in association an application for Conditional Use approval or for amendment to a Community Unit Plan and shall have the authority to recommend to the Governing Body approval, approval with conditions, or denial of a zoning adjustment when requested in association with an application to amend the Official Zoning Map or amend a Planned Unit Development or Protective Overlay.

SECTION 4. This Resolution shall take effect and be in force from and after its adoption and publication in the official county newspaper.

Commissioners present and voting were:

DAVID M. UNRUH	<u>AYE</u>
TIM R. NORTON	<u>AYE</u>
KARL PETERJOHN	<u>AYE</u>
RICHARD RANZAU	<u>AYE</u>
JAMES M. HOWELL	<u>AYE</u>

Dated this 7<sup>th</sup> day of December, 2016.

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

ATTEST:

\_\_\_\_\_  
KELLY B. ARNOLD, County Clerk

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JAMES M. HOWELL, Chairman  
Commissioner, Fifth District

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RICHARD RANZAU, Chair Pro Tem  
Commissioner, Fourth District

APPROVED AS TO FORM:

\_\_\_\_\_  
JUSTIN M. WAGGONER,  
Assistant County Counselor

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DAVID M. UNRUH  
Commissioner, First District

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TIM R. NORTON  
Commissioner, Second District

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KARL PETERJOHN  
Commissioner, Third District