

## ORDINANCE NO. 01-5167

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING A SECTION TO BE NUMBERED 27-621; REGULATING THE SITING OF BROADCAST FACILITIES, ANTENNAE, STRUCTURES AND ASSOCIATED EQUIPMENT AND BUILDINGS; DEFINING TERMS; ALLOWING CERTAIN NONCONFORMING BROADCAST FACILITIES; REGULATING THE ZONING DISTRICTS AND PLACEMENT OF BROADCAST ANTENNAE AND ANTENNAE SUPPORT STRUCTURES AND THE LOCATION AND CONSTRUCTION OF ALL LAND MOBILE RADIO SERVICE AND RADIO AND TELEVISION TRANSMISSION FACILITIES; ADDRESSING ABANDONMENT, SUBMITTAL REQUIREMENTS, AND APPEALS; AND, PROHIBITING NUISANCE BROADCAST FACILITIES.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:**

Section 1. That the Billings, Montana City Code be amended by adding a section to be numbered 27-621, to read as follows:

**"Sec. 27-621 Standards for land mobile radio and radio and television broadcast antennae and antenna support structures**

**A. Purpose.** The purpose of this section is to establish regulations for the siting of broadcast facilities, including land mobile radio services and radio and television broadcast antennae, antenna support structures and associated equipment and buildings on public and private property. The goals of this section, developed with the assistance and participation of the Broadcast and Land Mobile Radio industry in Yellowstone County, are to:

- (1) Encourage the location of broadcast facilities in non-residential areas and minimize the total number of antenna support structures throughout the community;**
- (2) Strongly encourage the joint use of new and existing broadcast antenna support structures;**
- (3) Require broadcast facilities to be located, to the extent possible, in areas where the adverse impact on the community is minimal;**
- (4) Require broadcast facilities to be configured in a way that minimizes the adverse visual impact of antenna support structures and antennae; and**

(5) Enhance the ability of the providers of land mobile radio services and radio and television broadcast services to provide such services to the community, as quickly, effectively, and efficiently as possible.

**B. Definitions.** For the purposes of this section, the terms used shall be defined as follows:

- (1) AM:** Amplitude-modulated broadcasting in the frequency band 535-1, 705 Kilohertz.
- (2) Antenna/ antenna support structure height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including any attached antennae. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.
- (3) Broadcast antenna:** A ground-, building- or tower-mounted antenna operated as a land mobile radio service or as a broadcast radio and/or television service as defined by the Federal Communications Commission (FCC) under Code of Federal Regulations and subsequent title amendments:
  - Title 47, PART 90 (47 CFR § 90) – PRIVATE LAND MOBILE RADIO SERVICES,
  - Title 47, PART 73 (47 CFR § 73) - RADIO BROADCAST SERVICES, which includes AM, FM, and Television Services, and
  - Title 47, PART 74 (47 CFR § 74) - EXPERIMENTAL RADIO, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES.
- (4) Broadcast antenna support structure:** Any structure or device specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing antennae. Antenna support structures may include, but are not limited to, self-supporting lattice towers, guyed towers, or monopole towers. In this section, the term applies to land mobile radio service and broadcast radio and television transmission antenna support structures. The term includes the structure and any support thereto.
- (5) Broadcast antenna or tower farm:** A tract of land that contains three (3) or more broadcast or land mobile radio service antenna support structures, any two are spaced no more than seven hundred fifty (750) linear feet of each other. Legal tracts must be adjacent to each other to be included in this definition. The term is inclusive of all antenna support structures, equipment enclosures, buildings and any additions thereto.
- (6) Broadcast facilities** An unstaffed facility for the transmission and/or reception of radio signals for communications purposes, typically consisting of an equipment building or enclosure, an antenna support structure and one

or more antennae. This definition applies exclusively to land mobile radio fixed systems, and radio and television broadcast transmission facilities.

- (7) FAA: Federal Aviation Administration.
- (8) FCC: Federal Communications Commission.
- (9) Land Mobile Radio Service (LMRS): A mobile service between base stations and land mobile stations or between land mobile stations as defined in Title 47, PART 90 (47 CFR § 90) – Private Land Mobile Radio Services.

### C. Applicability

All land mobile radio service and radio and television broadcast antenna and antenna support structures located within the City of Billings and/or the Yellowstone County zoning jurisdiction whether upon private or public lands shall be subject to this ordinance/resolution. This ordinance/resolution shall apply to broadcast antenna and antenna support structures upon state and federal lands to the extent of the city's and/or county's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise.

Pre-existing land mobile radio and radio and television broadcast antenna support structures and antennae shall not be required to meet the requirements of this ordinance/resolution, except as provided under section 27-621 G, "Nonconforming broadcast facilities".

### D. Broadcast antenna support structures and antennae located in residential zoning districts.

- (1) Land mobile radio and radio and television broadcast antenna support structures and antennae shall be permitted as an allowed use in all residential zoning districts provided they meet all of the following criteria:
  - a. Alternative broadcast antenna support structures conforming to all applicable provisions of this Code and roof-mounted antennae that do not add more than twenty (20) feet to the total height of the building on which it is mounted shall be permitted as an allowed use only when located on school, government-owned utility, and other government sites. Proposed antennae or antenna support structures that are contrary to this section are subject to the special review requirements as provided in Sections 27-1503 and 27-1509 of these zoning regulations, or may be submitted to the Board of Adjustment for a hearing, whichever is the preference of the owner/agency. The Board of Adjustment shall hold a public hearing at a time requested by the owner/agency, in accordance with Sections 27-1505(c) or 27-1510(c), BMCC. The Board of Adjustment shall forward comments and recommendations to the affected government agency for their consideration.

b. Antennae co-located on existing or approved alternative broadcast antenna support structures or existing or approved broadcast antenna support structures, which have previously received, all required approvals and permits shall be permitted as an allowed use.

(2) Broadcast antenna support structures and antennae shall be permitted in the agricultural-open space (AO) zoning district provided the following conditions and all applicable setback, lot coverage, and building (commercial equipment enclosures) height requirements are met:

a. Broadcast antenna support structures conforming to all applicable provisions of this Code shall be permitted when:

1. Located on school, government-owned utility, and government sites and alternative antenna support structures or roof-mounted antenna are used. Proposed antennae or antenna support structures that are contrary to this section are subject to the special review requirements as provided in Sections 27-1503 and 27-1509 of these zoning regulations, or may be submitted to the Board of Adjustment for a hearing, whichever is the preference of the owner/agency. The Board of Adjustment shall hold a public hearing at a time requested by the owner/agency, in accordance with Sections 27-1505(c) or 27-1510(c), BMCC. The Board of Adjustment shall forward comments and recommendations to the affected government agency for their consideration.

2. Broadcast antenna support structures fifty (50) feet or less in height.

b. Broadcast antenna support structures that are greater than fifty (50) feet in height shall be required to obtain special review approval.

c. Broadcast antennae co-located on existing or approved alternative broadcast antenna support structures or existing or approved broadcast antenna support structures that have previously received all required approvals and permits shall be permitted as an allowed use.

d. Broadcast antenna or tower farms are permitted by special review.

#### **E. Broadcast antenna support structures and antennae located in commercial zoning districts.**

(1) Broadcast antenna support structures fifty (50) feet in height or less shall be permitted as an allowed use.

- (2) Broadcast antenna support structures that exceed 50 feet in height or the maximum height limitations in the underlying commercial and industrial zoning districts as indicated in section 27-306, BMCC (whichever is greater) are permitted by special review.
- (3) Broadcast antenna or tower farms are permitted by special review, except in the CBD and South 27th Street zoning districts.
- (4) All broadcast antenna support structures located in heavy industrial (HI) shall be permitted as an allowed use, including broadcast antenna or tower farms.
- (5) All broadcast facilities located within the boundaries of an approved or preexisting broadcast antenna or tower farm shall be permitted as an allowed use.

## **F. General requirements.**

The requirements set forth in this section shall govern the location and construction of all land mobile radio service and radio and television transmission facilities governed by this ordinance/resolution.

- (1) **Building codes and safety standards.** To ensure the structural integrity of broadcast facilities, the owner of a facility shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for such facilities.
- (2) **Regulatory compliance.** All broadcast facilities must meet current standards and regulations of the FAA, the FCC, and other local, state or federal agencies with the authority to regulate facilities governed by this ordinance.
- (3) **Setbacks:**
  - a. Broadcast antenna support structures adjacent to residential uses or zoning. Broadcast antenna support structures must be set back, from all property lines, a distance equal to one-half (1/2) the height of the structure from any off-site residential structure or residentially zoned lot. Accessory structures, such as equipment enclosures or transmitter buildings, must maintain a minimum of a fifteen (15) foot setback from any lot line adjacent to a residential structure or residentially zoned lot, or the required setback of the zoning district where the antenna support structure is located, whichever is greater.
  - b. Commercial and industrial zoning setbacks: Broadcast antenna support structures and accessory facilities must meet the minimum yard setback requirements, including arterial setbacks, for the zoning district in which they are located.

c. Broadcast facilities in broadcast antenna or tower farms: Antenna support structures and accessory facilities located in antenna or tower farms must meet the minimum yard setback requirements, including arterial setbacks, for the zoning district in which they are located.

(4) **Lot coverage and height:** Broadcast antenna support structures and accessory structures shall not exceed lot coverage requirements for the zoning district in which they are located. Building and equipment enclosures shall not exceed the height restrictions for the zoning district in which they are located.

(5) **Fencing and buffering.**

a. **Fencing.** A chain link or solid wood fence, or masonry wall at least six (6) feet in height (eight (8) feet if razor or barbed wire is to be used) shall be constructed and maintained around the perimeter of the broadcast antenna support structure site. Climb-proof shields can be substituted for a fence or wall around the structure. Solid fences, at least six (6) feet in height are required adjacent to residences and residentially zoned property. All AM broadcast antenna support structures must be surrounded by a suitable fence as required by FCC regulations.

b. **Landscaping adjacent to residential uses and/or residential zoning.** For broadcast facilities located in a residential zoning district, adjacent to a residential use, or adjacent to a residentially zoned parcel, the following will be required: a continuous evergreen hedge at least four (4) feet in height when planted, shall be planted and maintained around the perimeter of the antenna support structure outside of the required fencing and spaced close together to provide a continuous visual screen. Shrubs shall also be planted and maintained around the guy anchors for visual screening purposes. AM Broadcast stations are exempt from this requirement due to overriding FCC regulations regarding vegetation in ground radial systems.

A performance bond or letter of credit for one hundred fifty percent (150%) of the landscaping and fencing materials and labor costs shall be posted with the Planning Department to ensure the placement of required landscaping and fencing in accordance with Section 27-1110, BMCC.

c. **Commercial landscaping.** Landscaping requirements shall not apply to broadcast antenna support structures located in Agricultural-Open Space, commercial or industrial zoning districts or approved broadcast antenna or tower farms.

d. **Exceptions for City Airport Airfield Area.** If federal safety and security standards within the city airport's airfield area prevent a broadcast antenna support structure from being fenced or landscaped, items (5)(a) and (5)(b) will not apply. Documentation of these standards must be submitted with the building permit or special review applications.

(6) **Lighting.** Broadcast antenna support structures shall not be artificially lighted unless required by the FAA or other local, state, or federal agency. Security lighting may be placed on a support structure no higher than twenty feet above ground. Cut-off security lights must be used in or adjacent to residential areas to prevent light spillage onto adjacent property.

(7) **Signage.** Signage shall be limited to non-illuminated warning and equipment identification signs unless otherwise required by the FAA and/or FCC.

**(8) Maintenance.**

- a. Equipment at a broadcast facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector or local street, access for maintenance vehicles shall be exclusively by means of the collector or local street.
- b. All property used for the siting of a broadcast antenna support structure or antenna shall be maintained, without expense to the city and/or county, so as to be safe, orderly, attractive, and in conformity with city and/or county codes including those regarding the removal of weeds, trash and landscape maintenance.

**(9) Visual impact/aesthetics.**

- a. Broadcast antenna support structures shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable local, state, or federal agency, be painted a neutral color or painted and/or textured to match the existing structure so as to reduce visual obtrusiveness.
- b. If a broadcast antenna is installed on a structure other than a tower, the associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the related equipment as visually unobtrusive as possible. Broadcast antennae and antenna support structures may be mounted on existing buildings that are thirty (30) feet or more in height above the street grade.
- c. Roof-mounted antennae and antenna support structures shall not add more than twenty (20) feet to the total height of the building on which they

are mounted. Roof-mounted equipment shall be made visually unobtrusive to match existing air conditioning units, stair, elevator towers or other background. Crow's nest antennae arrays are prohibited on rooftop structures.

d. Broadcast antenna or antenna support structures attached to new or existing structures shall be designed to blend with the structure's architecture and should be placed directly above, below or incorporated with vertical design elements of a structure.

## **G. Nonconforming broadcast facilities.**

Broadcast facilities in existence on the date of the adoption of these regulations, that do not comply with the requirements of these regulations, are subject to the following provisions:

- (1) Nonconforming broadcast facilities may continue their present use, but may not be expanded without complying with these regulations, except as further provided in this section.
- (2) Nonconforming broadcast antenna support structures which are hereafter damaged and destroyed, by less than fifty (50) percent of its replacement value, due to any reason or cause may be repaired and restored to their former use, location, and physical dimensions subject to obtaining a building permit and other necessary approvals thereof, but without otherwise complying with these regulations. If a broadcast antenna support structure is destroyed or damaged by fifty (50) percent or more of its replacement the broadcast antenna support structure must be brought into compliance with these regulations.
- (3) The owner of any nonconforming broadcast antenna support structure may make minor modifications in order to improve the structural integrity of the structure, to allow the structure to accommodate co-located antennae, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of these regulations.

## **H. Modifications of existing or broadcast facilities that meet the requirements of these regulations.**

- (1) **Minor modifications.** Minor modifications to facilities permitted under these regulations shall be approved by the City-County Planning Department so long as they comply with the original approved design. Minor modifications are as follows:
  - a. The addition of one or more antenna arrays to any existing antenna support structure, so long as the addition of the antenna arrays add no

more than twenty (20) feet in height to the facility and the increase in height of the support structure is no greater than ten (10) percent.

- b. Placement of additional antennae, up to the number the antenna support structure was originally designed to accommodate, shall be considered a minor modification.
- c. Repairs to or replacement of existing antennae or feedlines or support members (such as guy wires) are not considered modifications under this part.

(2) Major modifications. Major modifications to antenna support structures permitted under these regulations shall be approved through a special review. Major modifications are any that exceed the definition of minor modifications.

## **I. Abandonment.**

Broadcast facilities will be considered abandoned if they are unused by all providers at the facility for a period of six (6) months. Determination of abandonment shall be made by the City-County Planning Department which shall have the right to request documentation from the facility owner regarding support or antenna usage. Upon abandonment, the facility owner shall have ninety (90) days to:

- (1) Re-use the facility or transfer the facility to another owner who will re-use it; or
- (2) Dismantle the facility. If the facility is not removed within ninety (90) days of abandonment, the city and/or county may remove the facility at the facility and/or property owner's expense. If the facility is removed, city and/or county approval of the facility will expire. If the facility owner is unable to remove the facility within the ninety (90) days due to unusual circumstances, the City-County Planning Department may grant the facility owner an additional ninety (90) days in which to comply with the requirements of this section.

## **J. Special Review Submittal requirements.**

The applicant of new broadcast facilities shall provide the following documentation for review by the City-County Planning Department:

- (1) A map to scale showing the service area of the proposed broadcast facility.

(2) A site/landscaping plan showing the following items:

- a. North arrow.
- b. The location and dimensions of all vehicular points of ingress and egress, drives, alleys and streets.
- c. Property boundaries and lot line dimensions.
- d. The locations and dimensions of all existing and proposed buildings, structures, and improvements including those that will be removed. All information must be labeled.
- e. Setbacks from all property boundaries for existing and proposed structures and buildings.
- f. Centerline and names of major and minor arterial streets relevant to the application.
- g. Elevation drawing of proposed broadcast facility including the antenna support structure, antenna platforms and associated equipment enclosures.
- h. Latitude, longitude and height of proposed antenna support structures.
- i. Location of artificial light sources and the areas of illumination.
- j. Applications for tower farms shall include items a through h and a general overall development plan showing the location of future structures and equipment enclosures.
- k. Detailed landscaping plan of the site when applicable.
- l. Other pertinent features as determined by the Zoning Coordinator or Development Review Committee.

(3) Area map showing adjoining property boundaries and the location of existing buildings within a distance equal to the required setbacks as set forth in section F (3).

(4) Documentation of minimum light requirements from the FAA or other local state or federal agency for the antenna support structure and/or antennae. Where applicable, applicant will provide documentation of the FAA airspace review and a copy of the comments provided by the FAA. Where an application has been filed with the FAA for the services proposed and decision on minimum light requirements by the FAA is still pending, submittal

of a copy of the proposed application shall be sufficient to meet the requirements of the is paragraph.

(5) When the applicant is a land mobile radio service provider, or a radio or television broadcaster, proof must be provided that the applicant is licensed by the FCC to provide the services that the proposed facility is designed to support or the applicant must prove the necessary application have been filed with the FCC and/or FAA for the services proposed, together with proof all filing fees have been paid.

## **K. Special review uses**

(1) A request for a special review shall be initiated by application to the City-County Planning Department and handled in accordance with the special review procedure provided in section 27-1503 and 27-1509, BMCC of these zoning regulations. The Billings City Council or Yellowstone County commission may issue special review approval under these sections provided they have determined that the requirements of these regulations have been satisfied.

(2) In granting special review approval, the Billings City Council or Yellowstone County Commission may impose additional conditions to the extent determined necessary to buffer or otherwise minimize adverse effects of the proposed broadcast facilities on surrounding properties.

(3) Expiration of special review approval.

a. A building permit must be applied for within six (6) months of a special review approval and the project shall be completed within one (1) year from the date the special review is granted by the city council or county commission. For the purpose of these regulations, the term standard of construction shall be defined as the installation of a permanent foundation for the antenna support structure. The city council and/or county commission may grant one (1) six (6) month extensions of the period to start construction upon written request by the applicant.

b. The city council or county commission shall not approve an extension unless the development plan is brought into conformance with any relevant zoning regulations that have been amended subsequent to the original approval and unless the applicant provides adequate evidence that construction is able to begin within the time period sought. This evidence shall include, but not be limited to, the acquisition of any or all required government approvals and project financing, the city council or county commission may as a condition of approval of a special review establish the period of time such special review may remain in effect.

- c. Small increases in the height of existing antenna support structures approved by special review may be approved by the City-County Planning Department on an administrative basis provided that the increase in the height of the antenna support structure is ten (10) percent or less.
- d. Special review approvals for broadcast antenna or tower farms shall not expire until such time as all facilities within the boundaries of the antenna or tower farm have been abandoned.

#### L. Appeals.

Appeals from any decision of the City-County Planning Department may be taken by any person aggrieved or any official of the city affected by the decision of the City-County Planning Department. Such appeal shall be to the city and/or county board of adjustment pursuant to section 27-1506 and/or section 27-1511 BMCC.

#### M. Nuisances.

Broadcast facilities, including, without limitation, power source, ventilation and cooling, shall be operated at all times within the city and/or county noise regulations, shall not be operated so as to cause the generation of heat that adversely affects a building occupant and shall not be maintained or operated in such a manner as to be a nuisance."

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 23<sup>rd</sup> day of July, 2001.

PASSED, ADOPTED and APPROVED on second reading this 13<sup>th</sup> day of August, 2001.

CITY OF BILLINGS

By Charles F. Tolley  
Mayor

ATTEST:



By Marita Herold  
City Clerk