

ORDINANCE NO. 2016-O-169A

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS, REGULATING THE SITING AND CONSTRUCTION OF WIRELESS COMMUNICATIONS FACILITIES, INCLUDING BROADCASTING FACILITIES AND SATELLITE EARTH STATIONS; PROVIDING FOR CONFLICTING PROVISIONS, PURPOSE, REQUIREMENTS, SEVERABILITY, EFFECTIVE DATE, AND OPEN MEETINGS CLAUSES.

WHEREAS, the City Council of the Village of Volente recognizes the need, demand, and importance of regulations for Wireless Communication Facilities; and

WHEREAS, the City Council also strives to protect the health, safety and general welfare of the public and to provide for the orderly development of land and use of property within its corporate limits by adopting plans and regulating ordinances; and

WHEREAS, the City Council seeks to maintain the value of the Village's scenic and natural resources, its unique community character and natural beauty and its residents' peaceful use and enjoyment of their property; and

WHEREAS, the Village intends to abide by the policies embodied in the Telecommunications Act of 1996 in such a manner as to not unreasonably discriminate between providers of functionally equivalent personal wireless service or to prohibit or have the effect of prohibiting personal wireless service in the Village; and

WHEREAS, because of said ideals the City Council deems it desirable to regulate by ordinance the siting and construction of wireless communication facilities within Volente; and

WHEREAS, the City Council has determined that these restrictions should take in to account a variety of considerations, such as height restrictions, siting, scale, materials safety concerns, visual impact, and character of the surrounding properties and the community as a whole; and

WHEREAS, the City Council is authorized to regulate Wireless Communications Facilities within the corporate limits of the Village by virtue of the *Texas Constitution* and by the *Texas Local Government Code, Chapters 51, 54, 211, 216, and 217.*

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE OF VOLENTE, TEXAS, THAT:

Sec. 168.100 Purpose

The city council hereby declares that the purposes of this subsection are to:

- (A) Protect and provide for the public health, safety and general welfare of the City and its citizens;
- (B) Establish regulations and standards for the siting of CFs and antennas that do not unreasonably discriminate among providers of equivalent services and to ensure equitable treatment of providers of such services;
- (C) Encourage the users of existing structures, support structures and antennas to collocate where possible as an alternative to new CF construction and to locate all facilities, to the extent possible, in areas where adverse impact on the community is minimal;
- (D) Encourage the joint use of CFs;
- (E) Encourage stealth design and construction of facilities, where feasible, which minimize adverse visual impacts;
- (F) Ensure compliance of all CFs with current federal, state, and local regulations; and

- (G) Enhance the ability of providers of telecommunications services to provide such services within the city safely, effectively and efficiently.

Sec. 168.101 Definitions

Accessory Equipment: Any equipment serving or being used in conjunction with a CF or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Alternative Tower Structure: Clock towers, steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers. See also the definition of “Stealth Tower.”

Amateur Radio Antenna: A radio communication antenna used by a person holding an amateur station license from the Federal Communications Commission.

Antenna: A device used in communications, which transmits or receives radio signals, television signals, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

Antenna, Building Attached: An antenna attached to an existing structure in two general forms: (1) roof-mounted, in which antennas are placed on the roofs of buildings, or (2) building-mounted, in which antennas are placed on the sides of buildings. These antennas can also be mounted on structures such as water tanks, billboards, church steeples, electrical transmission towers, etc.

Antenna Facility: The mast, pole, structure, tower, building, equipment and other supporting material used to mount the antenna and equipment, including equipment storage buildings, and concealing or screening structures needed to operate an antenna. The antenna is considered part of the antenna facility. This definition does not include satellite antennas less than one (1) meter in diameter.

Collocation: The act of locating CFs and/or equipment on an existing structure without the need to construct a new support structure and without a substantial increase in the size of the existing structure.

Dish Antenna: A parabolic or bowl-shaped device that receives and/or transmits signals in a specific directional pattern.

Equipment Storage Building: An unmanned, single-story equipment building or structure used to house telecommunications equipment necessary to operate the telecommunications network.

Existing Structure: Previously permitted support structure or any other structure, including but not limited to, buildings or water tanks, to which CFs can be attached.

Monopole Tower: A self-supporting tower facility composed of a single spire used to support telecommunication antennas. Monopole towers cannot have guy wires or bracing.

Pre-existing Towers and Pre-existing Antennas: Any tower or antenna for which a building permit or conditional use permit has been properly issued prior to July 1, 2016 including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

Satellite Antenna Less Than One (1) Meter in Diameter: An antenna, one (1) meter or less in diameter that enables the receipt of television signals transmitted directly from satellites to be viewed on a television monitor and/or enables the transmission of signals directly to and from satellites for high-speed Internet access. Such antennas are commonly known as a satellite dish, television receive-only antenna, dish antenna, parabolic antenna, or satellite earth station antenna.

Satellite Antenna Greater Than One (1) Meter in Diameter: An antenna, greater than one (1) meter in diameter, which enables the transmission of signals directly to and from satellites. Such antennas are commonly known as a satellite dish, dish antenna, parabolic antenna, or satellite earth station antenna.

Stealth Tower: Shall mean a tower that is camouflaged to be unrecognizable as a telecommunications facility and shall include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structures, antennas integrated into architectural elements such as church spires or window walls, and antenna structures designed to resemble light poles, flagpoles or trees.

Support Structure: A structure designed to support CFs including, but not limited to Monopoles, Towers and other freestanding, self-supporting structures.

Telecommunications Facility (CF): Any unmanned facility established for the purpose of providing wireless transmission of voice data, images or other information including, but not limited to, cellular telephone service, personal communications service, radio services, television services, or data transmission services. A CF can consist of one or more Antennas and Accessory Equipment.

Telecommunications Tower: Any structure that is designed and constructed for the purpose of supporting one (1) or more antennae used for the provision of commercial wireless telecommunications services. This definition includes monopole towers, alternative mounting structures or any other vertical support used for wireless telecommunications antennae. This definition does not include commercial radio or television towers; nor does it include such things as TV Antennas, Dish or Satellite Antennas Less Than One (1) Meter in Diameter or Amateur Radio Antennas.

Telecommunications Tower Facility: A facility that contains a telecommunications tower and equipment storage building or structure.

Telescopic or Crank-Up Tower: An antenna support structure designed to be lowered and raised either manually or mechanically.

TV Antenna: An antenna that enables the receipt of television signals transmitted from broadcast stations.

Sec. 168.102 Applicability; Conditional Use Permit Required

- (A) The regulations herein apply to all communication facilities including but not limited to telecommunication towers, support structures and antennas installed, built or modified (generally called "CF") supporting one or more antennas for the reception or transmission of wireless radio, television, microwave, or telephone communication or other communication by electromagnetic waves within the corporate limits of the City.
- (B) No property within the corporate limits of the city may be used for the siting and construction of a CF thereon unless the owner or authorized agent of the owner of said property shall have first obtained a CF conditional use permit. The CF conditional use permit shall be in addition to other permits otherwise required by the City's codes.

Sec. 168.103 Procedure for obtaining permit.

- (A) In addition to any other materials required for a standard permit under this section or any other ordinance of the city, all applicants for permits to construct a CF or antenna shall submit the following:
 - (1) Visual impact demonstrations using photo simulations of the proposed facility as it would be seen from at least five points of public view including residential areas, public rights-of-way, and public parks and other sites as deemed appropriate by the planning and zoning commission and approved by the city council;
 - (2) The general capacity of the proposed CF in terms of the number and type of antennas it is designed to accommodate;
 - (3) The applicant's current overall system plan for the city documenting telecommunications facilities presently constructed or approved and future expansion plans, including a map that indicates the proposed provider's current coverage for the city and the area that the requested site would cover;
 - (4) A copy of the lease or letter of authorization from the property owner evidencing applicant's authority to pursue the permit application.
 - (5) A statement outlining the rationales for the particular location, design and height of the proposed CF, including documentation of all the existing sites or structures considered as alternatives to the proposed location and the reasons why those alternatives were either unavailable or not feasible; an application may not be approved unless Applicant can document that the proposed CF cannot be accommodated on an existing or approved tower located within the corporate limits of the City due to:
 - a. the planned CF would exceed the structural capacity of existing and/or approved towers, considering existing and planned use of those tower(s) and the existing tower(s) cannot be reinforced to accommodate the planned CF at a reasonable costs;
 - b. the planned CF would cause radio frequency interference with other existing or planned equipment for these existing tower(s) and the interference cannot be prevented at a reasonable costs;
 - c. the existing or approved CF do not have space on which the planned CF can be placed so it can function effectively and reasonably in parity with other similar equipment in place or approved; and/or
 - d. geographic service requirements of the planned CF.
 - (6) A landscape plan drawn to scale showing proposed and existing fencing and landscaping, including type, spacing, size and irrigation methods. A combination of existing/native vegetation, natural topography, manmade features such as berms, walls, decorative fences and any other features can be used instead of landscaping if those features achieve the same degree of screening as the required landscaping.
 - (7) A visual depiction or architect's rendering (drawn to scale) of the CF;
 - (8) A site plan, drawn to scale, indicating the location and height of the CF (with associated ancillary facilities), as well as its proximity to (or distance from) buildings

and to other structures on the same and adjacent properties to include a radius measured from the base of the structure of 200 feet plus the maximum height of the structure (the “fall zone”). The fall zone must remain within the boundaries of the property where the structure is located and may not encompass structures (other than the CF), public streets or utility lines;

- (9) A certification and sealed report from a state registered professional engineer stating that all structural components of the CF comply with all applicable codes and regulations including wind loads. In the case of CFs, the report should further note the extent to which the CF is designed and/or built to accommodate co-location;
 - (10) A statement that the proposed support structure will be made available for collocation to other service providers at commercially reasonable rates;
 - (11) Applicants, in addition to the conditional use permit fee, shall reimburse the city for actual costs incurred by the city for radio frequency evaluations, structural engineering reviews, professional fees, and/or any other services that the city may deem necessary to review and process the application
- (B) Towers erected by a public agency for police, fire, EMS, 911 or other similar public emergency communications shall be exempt from the requirements of this section.
 - (C) Within thirty (30) days of the receipt of an application for review, the Planning and Zoning Commission shall either:
 - (1) inform the applicant, in writing, the specific reasons why the application is incomplete and does not meet the submittal requirements; or deem the application complete.
 - (D) If the City informs the Applicant of an incomplete application within such thirty (30) days, the overall timeframe for review is suspended until such time that the Applicant fully provides the requested information.
 - (E) An Applicant that receives notice of an incomplete application may submit the necessary additional information to complete the application. An Applicant's failure to complete the application within sixty (60) days after receipt of written notice shall be deemed withdrawn. An application withdrawn or deemed withdrawn may be resubmitted upon the filing a new application fee. All timeframes herein stated begin again upon resubmittal.
 - (F) Once an application is deemed complete, the City shall schedule such application for public hearing before the Planning and Zoning Commission and the City Council on the next available hearing date that complies with all notice requirements.
 - (G) The City Council may, after receiving the recommendation of the commission, grant a conditional use permit pertaining to CFs in compliance with this section for the conditional uses listed herein. The city council may impose appropriate conditions and safeguards, including a specified period of time for the permit, to protect the comprehensive plan and to conserve and protect property and property values in the neighborhood.
 - (H) A variance granted by the City Council is required for any CF which will not comply with the requirements of this Section unless otherwise specified herein.
 - (I) A final decision by the City Council shall be issued in writing within one hundred fifty (150) days from the date the application is deemed complete. Should the City Council deny issuance of the conditional use permit, it shall provide written findings and justifications for such denial which shall be based on the compliance or non-compliance of this Applicant with this ordinance.

Sec. 168.104 Construction requirements.

- (A) All CFs shall be of monopole construction or of a stealth design, which is designed in such a way that the facility is not readily recognizable as telecommunications equipment and is virtually transparent or invisible to its surroundings.
- (B) CFs shall not be illuminated by artificial means unless required by the Federal Aviation Administration or other federal, state or city law, rule or regulation.
- (C) No CFs shall be constructed within 1,320 feet of any pre-existing or permitted CF.

- (D) Antenna support structures shall be two hundred (200) feet from all residential zoning districts, measured from the base of the antenna support structure to the nearest residential zoning district boundary.
- (E) The unmanned equipment buildings shall not exceed five hundred square feet of gross floor area per building and shall not exceed twelve (12) feet in overall height above the ground at the geometric center of the foundation.
- (F) The applicant shall ensure that the CF will not cause localized interference with the reception of area television or radio broadcasts, or other legally existing CFs. If on review the city finds that the CF will interfere with such reception, the city may deny the conditional use permit. If such interference occurs after the permit is issued and the problem is not corrected within 60 days, the city may revoke or modify the permit.
- (G) Construction, placement, removal or alterations of the CF and related buildings shall not be performed outside the time periods designated in the Noise Control Ordinance of the Village of Volente, Ordinance No.2008-O-88.

Sec. 168.105 Maintenance and inspection.

- (A) The owner or operator of a CF shall be responsible for the maintenance of the CF and shall maintain all buildings, structures, supporting structures, wire, fences, or ground areas used in connection with a CF in a safe condition and in good working order, as required by city building, fire, or any other applicable codes, regulations or ordinances or to standards that may be imposed by the city at the time of granting of a permit. To the extent required under a permit issued under this Section, such maintenance shall include, but shall not be limited to, maintenance of the paint, landscaping, fencing, equipment enclosure, and structural integrity. If the city finds that the CF is not being properly maintained, the city will notify the owner or operator of the CF of the problem. If the owner or operator fails to correct the problem within 30 days after being notified, the city may undertake maintenance at the expense of the owner or applicant, or revoke the permit, at the city's sole option.
- (B) Antenna may be attached to buildings or independent support structures, if:
 - (1) The pole replaced or modified is a functioning utility pole or light standard within a utility easement or public right-of-way, recreation facility light pole, or antenna support structure; and
 - (2) The replaced or modified antenna support structure, including antenna array, does not exceed the height of the original utility, light standard, or recreation facility pole by more than twelve (12) feet, or the height of the original telecommunication tower and antenna array; and
 - (3) The pole replaced with an antenna support structure does not obstruct a public sidewalk, public alley, or other right-of-way and pole appearance and function, except for antenna, are not significantly altered; and
 - (4) The existing support structure is engineered to support the proposed antenna.
- (C) By applying for a conditional use permit under this section, the applicant specifically grants permission to the city, its duly authorized agents, officials, and employees to enter upon the property for which a permit is sought, after first providing a reasonable attempt to notify a person designated by the applicant, except in the event of an emergency, for the purpose of making all inspections required or authorized to be made under applicable regulations. The city may require periodic inspections of the CF to ensure structural integrity and other code compliance. Based upon the result of an inspection, the city may require repair or removal of a CF with the cost of compliance borne by the applicant/owner.
- (D) The applicant shall provide the City with a letter of certification from the design engineers indicating that the CF was constructed according to the plans submitted to the City. The letter shall be submitted within thirty (30) days of completion of the CF.
- (E) The City shall require inspections of the CF to ensure structural integrity and other code compliance at least every two (2) years. Based upon the result of an inspection, the city may require repair or removal of a CF with the cost of compliance borne by the applicant/owner.

The owner of the CF shall provide the city with a certified copy of any engineer's inspection report, which includes but is not limited to:

- (1) The condition of the grounding system
- (2) The structural integrity of the facility
- (3) Any damage incurred since the last inspection
- (4) The condition of the bolts; and
- (5) A plan to correct any deficiencies.

Sec. 168.106 Location of facilities on or near Scenic Lake and Hill Country Vistas.

CFs may be approved on or near lake and hill country vistas by special exception and only if so concealed as to be substantially invisible. The views and vistas of the lake and hill country shall not be impaired or diminished by the placement of CFs and antennae.

Sec. 168.106 Height and size restrictions.

- (A) No new or height modified CF shall exceed 100 feet in height. However, in the event of dense vegetation or other substantial obstacles to signal propagation, facilities can extend to a height of no more than 20 percent above the average tree canopy height within 1,000 feet of the proposed facility.
- (B) CFs that simulate objects that typically occur in landscapes similar to the proposed location (except billboards, electrical transmission, or CFs) may exceed 100 feet in height if, based on the judgment of the planning and zoning commission and as approved by the city council, it would appear in context on the landscape, is aesthetically acceptable, and would be a preferable alternative to an undisguised facility.
- (C) CFs located atop or within existing buildings or structures may result in an overall increase in height of the structure of no more than ten percent of the structure's height without the facility, or the maximum height allowed in the zoning district in which the structure is located, whichever is less; Planning and Zoning Commission may recommend and the City Council may approve a larger increase in height where information is provided that the landscaping and aesthetics are not as impacted and such increase would be preferable to a new or undisguised facility.
- (D) The unmanned equipment buildings shall not exceed five hundred square feet of gross floor area per building and shall not exceed twelve (12) feet in overall height above the ground at the geometric center of the foundation.

Sec. 168.107 New CFs and Collocation.

- (A) In all applications for construction of a new CF, the applicant must prove by substantial evidence that a bona fide need exists for the facility and that no reasonable combination of locations, techniques, or technologies will obviate the need. The applicant must further prove that it has made all reasonable efforts to procure antenna space on existing facilities and that the cost of co-location exceeds the cost of a new facility by at least fifty percent. In the case of co-location, the pro-rata reimbursement to the initial applicant from the future provider shall not exceed fifty-five [percent] (55%) of the original cost for construction of the antenna support structure.
- (B) Prior to the issuance of a permit for a new CF, the applicant shall demonstrate commitment to joint use as follows:
 - (1) The applicant requesting the permit shall submit evidence to the city demonstrating that a genuine effort has been made to solicit additional users for the proposed new CF. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless communications services within Travis County and adjacent counties, advising of the

- intent to construct a new CF, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen business days.
- (2) The applicant shall sign an instrument, maintained by the city, agreeing to encourage and promote the joint use of CFs within the city and, to that extent, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing or delaying joint use of any CF where fair and just market reasonable compensation is offered for such use.

Sec. 168.108 Collocation - Public Entity.

CFs owned by entities other than governmental entities may be collocated on property owned by the City under the following conditions:

- (A) The CFs may only be attached to an existing improvement or replace an existing improvement and must follow the requirements set forth herein.
- (B) The improvement shall be capable of supporting the CF and any associated equipment and shall not interfere with the use or other operations of the City.
- (C) For antennas attached to improvements located in rights-of-way, all associated equipment must be less than thirty (30) inches in height, located underground, attached to the support structure itself, or be located in an areas outside the right-of-way.
- (D) Prior authorization for use of City property must be shown by a franchise, lease, license, permit, or other document duly executed by an authorized City representative and adopted in conformance with all applicable City regulations for the property. The granting of a franchise, lease, license, or permit is at the sole discretion of the City Council and its authorized designee and must comply with all ordinances.
- (E) The antennas and any accompanying equipment must comply with all ordinances, rules and regulations.
- (F) The applicant requesting the permit must provide a minimum amount of \$500,000 liability insurance that covers the CF and such insurance coverage must be maintained at all times. The City must be listed as an additional insured and proof of insurance coverage must be provided to the City at the time application is made for the permit
- (G) Indemnification. All collocation applicants who will be attaching any CF to any City owned property, the applicant and/or owner of a CF shall expressly indemnify, protect, and hold the City harmless to the maximum extent allowed by law. No exceptions to this requirement shall be allowed.

Sec. 168.109 Collocation - Private Property.

CFs may be collocated on property owned by private entities. CFs proposed to be located on any privately owned property or structure must provide:

- (A) A copy of the lease or other agreement indicating the approval by the owner of such property or structure;
- (B) An engineer's report or other acceptable form of proof of the structural integrity of the property and/or structures the applicant intends to attach to.
- (C) All CFs attached to privately owned property or structures must comply with all requirements set forth herein or request a variance.
- (D) If a current collocated CF must be relocated due to their own circumstances or decision, such CF shall be considered an application for a new CF and must provide the information required hereunder.
- (E) If a current collocated CF must be relocated due to circumstances not within the owner of the CF's control, such CF application shall be required to provide the information set out in 12(D)(i). Such applications shall still be required to address construction requirements,

maintenance inspections, height restrictions, insurance, signs, electronic emissions and removal.

Sec. 168.110 Setback.

- (A) No new CF shall be constructed without a minimum setback equal to the fall zone, measured from the CF's base to the nearest property line.
- (B) CFs shall be setback a minimum of 500 feet from one- and two-family districts and 250 feet from any multifamily district.
- (C) No CFs shall be allowed within 3,000 feet of the 681' MSL shoreline of Lake Travis.
- (D) The City Council may allow an existing co-location CF to continue on a structure or be transferred to an existing structure that does not meet the minimum setback equal to the fall zone so long as such CF application includes engineering plans under the seal of a registered professional engineer of the State of Texas showing structural integrity that meets or exceeds the FCC, Electronic Industries Association Standard EIA-222D, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures and/or the Building Codes for both the CF and the structure or building the CF is or shall be attached to.

Sec. 168.111 Equipment shelters and CF access.

No equipment shed for a CF shall exceed 750 square feet in area nor 12 feet in height. All such sheds shall be screened with vegetation or other aesthetically pleasing materials. If an equipment shed is part of a co-located CF and is or will be located on leased premises, such shed shall be built to blend in with the surrounding location. Furthermore, all such sheds and CFs shall be secured with approved fencing and a locked gate.

Sec. 168.112 Signs.

Unless otherwise required by state or federal law, the only signage that is permitted upon an antenna-supporting structure, equipment enclosures, or fence (if applicable) shall be: informational and for the purpose of identifying the antenna-supporting structure (such as ASR registration number), as well as the party responsible for the operation and maintenance of the facility, the party's current address and telephone number; security and safety signs; and property manager signs (if applicable). If more than two hundred twenty (220) voltage is necessary for the operation of the facility and is present in a ground grid or in the CF, signs located on each side of the structure or fence shall display in large, bold contrast letters, the following "High Voltage – Danger," with the minimum height of each letter being four inches. No commercial messages nor any other signs beyond the signs authorized in this subsection shall be placed on any CF or related facility.

Sec. 168.113 Fencing and parking.

- (A) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with a security fence not less than six (6) feet in height. The fence shall not be less than eight (8) feet in height measured from finished grade. Access to the antenna support structure shall be through a locked gate
- (B) At least one (1) off-street parking space shall be provided per CF.
- (C) The location and design of driveways and/or accesses to reach the CF from the public street shall be in conformance with the City's Development requirements.

Sec. 168.114 Electronic emissions and electromagnetic radiation.

- (A) Prior to commencing regular operation of the facility, all facility owners and operators must submit a certificate of compliance with all current Federal Communications Commission

regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility.

- (B) All facility operators and owners must sign an agreement, to be maintained by the city, agreeing to bring facilities into compliance with any new federal, state, or local laws or regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility within 120 days of the effective date of the regulations.

Sec. 168.115 Revocation of Permit

- (A) The owner or operator of any tower for which a permit is issued shall, after issuance of the permit, operate and maintain the tower in accordance with the requirements of the permit and this article.
- (B) If the owner or operator of any tower and related structures either:
 - (1) Discontinues use of the tower for a period of 180 days; or
 - (2) Allows the tower and related structures to deteriorate so that they are not structurally sound or usable; or
 - (3) Does not remain in continuous compliance with the terms of his permit or this ordinance; or
 - (4) Permits the tower and related structures' appearance to deteriorate; or
 - (5) Allows the tower and related structures to become a danger to public safety; or
 - (6) Allows weeds or other vegetation to accumulate; or
 - (7) Uses the site for storage or allows any accumulation of materials, then the building inspector shall revoke the permit.
- (C) Upon revocation of the permit, the owner or operator shall dismantle and remove the tower and related structures and clear the site.

Sec. 168.116 Removal of facilities.

- (A) The owner of a CF shall establish a cash security fund or provide the city with an irrevocable letter of credit in a form acceptable to the city attorney in an amount which shall be determined and defined in the permit as satisfactory to secure the cost of removing the antenna, antenna array, tower, or other facility. In the event of a transfer of ownership, the seller shall be responsible for notifying the buyer of this requirement and for notifying the city of the transfer.
- (B) CFs that have, due to damage, lack of repair, or other circumstances, become unstable, lean significantly out-of-plumb, or pose a danger of collapse or falling shall be removed or brought into repair within sixty (60) days following notice given by the Building Official. If the CFs are not made safe or removed with sixty (60) days of notification from the City, the City may remove the CFs and place a lien on the property for the costs of the removal. The Building Official may order immediate action to prevent an imminent threat to public safety or property.
- (C) CF is considered abandoned after 180 days of no active communications. The CF must be removed and the site must be restored to substantially its original condition at the owner's expense within ninety (90) days from the cessation of active communications. The security fund shall be returned or the letter of credit shall be released once the site has been returned to substantially its original condition in the time indicated by the owner. In the event the owner fails to remove the CF or the city receives notice that the irrevocable letter of credit will not be renewed, the city shall be entitled to use the cash security fund or letter of credit to remove the CF. Any remaining balance in the cash security fund or the irrevocable letter of credit shall be collected by the city as a penalty for failure to remove the CF and deposited in the general fund.
- (D) This provision shall not become effective until all users cease using the antenna support structure.

Sec. 168.117 Assignment of conditional use permit.

The owner of a CF may assign or transfer to a subsequent purchaser of the CF the conditional use permit, with the city's written consent. It shall be a condition of the city's consent that the new owner establish a cash security fund or provide the city with an irrevocable letter of credit in compliance with subsection (L) above.

Sec. 168.118 Expiration of conditional use permit.

A conditional use permit for a CF shall become null, void and non-renewable if the permitted CF is not constructed within one year of the date of issuance, provided that the conditional use permit may be extended one time for six months if construction has commenced before expiration of the initial year.

Sec. 168.119 Effective date and effect on pre-existing and permitted CFs.

- (A) The requirements of this ordinance apply to any CF and the expansion and/or alteration of any existing CFs; provided that an in-kind or smaller replacement of transmission equipment will require only a written notification to the city.
- (B) A CF, which was in existence on the date of the original adoption of this ordinance, shall not be required to be removed or relocated in order to meet the minimum distance requirements of this subsection due to subsequent platting of a residential lot nearer to the CF than the distance requirements of this subsection. However, any alteration to existing CFs shall require compliance with the applicable provisions of this code.

Sec. 168.120 Commencing without Permit.

It shall be unlawful to commence any portion of construction of or improvement to a CF, including all associated appurtenances, until the conditional use permit has been issued and any building permits required for such work under the City's codes have been obtained.

Sec. 168.121 Dish Antenna.

Personal dish antennas are exempt from the provision of this Section (12) but shall be required to abide by the following regulations to the extent they do not violate any federal regulations:

- (A) Dish antenna shall not be permitted in any front setback area or side yard setback adjacent to any roadway.
- (B) Ground mounted dish antennas mounted on masts over to six (6) feet in height shall be screened from roadways and adjacent property by a minimum six (6) foot high screening fence, evergreen hedge or masonry wall.
- (C) Dish antennas mounted on masts in excess of twelve (12) feet in height shall not be permitted on any property used for residential purposes.
- (D) Building/roof-mounted dish antennas two meters or less in diameter are permitted on all buildings in excess of 5,000 square feet of building floor area, subject to (i) above.
- (E) One (1) building/roof-mounted dish antenna two meters or less in diameter is allowed per living unit, including each living unit within a multifamily building.
- (F) Building/roof-mounted dish antennas in excess of one meter in diameter mounted on residential properties shall be painted to have an appearance that blends with the building on which they are located or be located so that they are not visible from any adjacent roadway.
- (G) Building/roof-mounted dish antennas in excess of two meters in diameter on commercial buildings shall be painted or screened with enclosures so as to have an appearance that blends with the building on which they are located or be located so that they are not visible from any adjacent roadway.

Sec. 168.122 Amateur or citizen's band radio antenna.

Radio and television antennas, limited to those used by the federal licensed amateur radio operators, unlicensed citizens band radio operators, and private citizens receiving television signals, including satellite dish antennae; which are less than forty (40) feet above the ground in residential and neighborhood service districts' shall be considered as permissible accessory uses in all zoning districts and shall be permitted in accordance with the regulations for detached accessory structures. However, any person constructing and/or operating an antenna-support structure, antenna or antenna arrays less than the height enumerated above shall, upon request from the City building official, provide evidence of a valid FCC amateur license for operation of an amateur facility. Failure to demonstrate a valid license upon request shall be cause for issuance of a code violation citation and the person shall either furnish a valid FCC license or remove the structure within fifteen (15) days of the issuance of the citation. Noncommercial, amateur, ham radio or citizen's band antenna-supporting structures, antennas or antenna arrays with a height greater than as provided herein shall be regulated in accordance with this ordinance.

Sec. 168.123 Civil and Criminal Penalties.

- (A) A person who violates any provision of this ordinance is subject to prosecution for a class C misdemeanor.
- (B) The city shall also have, in addition to the penalty above described, the authority to seek temporary and permanent injunctive relief, as well as the authority to seek recovery of the city's costs, including remediation costs, through judicial action.

Sec. 168.124 Criminal Prosecution.

Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not to exceed five hundred dollars (\$500). Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a misdemeanor.

Sec. 168.125 Removal due to Violation.

Any Wireless Communication Facility violating this ordinance must be removed or brought into compliance within thirty (30) days of receipt of written notice from the Village. If the person responsible for the facility fails to remove or alter the structure so as to comply with the standards set forth in this ordinance within thirty (30) days after such notice, the Village may undertake such removal or alteration as is necessary to bring the structure into compliance and assess the costs to the person responsible for the facility. The Village may cause any communication facility which presents an immediate peril to persons or property to be removed or altered immediately, without notice, and without compensation to the facility's owner.

Sec. 168.126 Severability.

If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Sec. 168.127 Effective Date.

This ordinance shall take effect after passage and the required posting and publication of this ordinance.

Sec. 168.128 Public Notice and Meeting.

It is hereby found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED ON THIS 28th DAY OF JULY, 2016 BY A VOTE OF 5 AYES, 0 NAYS, AND 0 ABSENTATIONS OF THE CITY COUNCIL OF THE VILLAGE OF VOLENTE.

Signed:

Ken Beck, Mayor

Attest:

Julia Vicars, City Secretary