



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**July 11, 2019**

**Department** Administration

**Director Approval** *Kelly Passauer*

**AGENDA ITEM** Consider text amendments to Appendix B-Zoning of the City Code relating to:

1. Article IV. Rules and Definitions.
2. Article VI. Supplementary District Regulations
3. Article X. Special provisions applying to miscellaneous conditional uses; and
4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Communication Towers".

**SUMMARY RECOMMENDATION** Approve the text amendment.

**BACKGROUND** This item was originally considered at your June 13, 2019 meeting. At that meeting Lisa Richards appeared and indicated that she did not feel the information provided in the staff report and the motion met the requirements of Section 1604.1 and 1604.2. The City Commission tabled action and sent this item back to the Planning Commission for reconsideration.

On July 2, 2019 the Planning Commission reconsidered this agenda item with the participation and guidance of City Attorney Jeff Chubb. Correspondence received from Lisa Richards on July 1, 2019 was also reviewed. The follow motion was made:

*On the motion of Philipp Umlauf, seconded by Barb Emert, the Planning Commission accepted the text amendment to modify "Communication Towers" in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit; based on the following:*

- *That such change is consistent with the intent and purpose of these regulations;*
- *That the areas which are most likely to be directly affected by such change will include the C-2 and C-4 zones which will allow communication towers with a conditional use permit which does provide an opportunity for property owners within the notification area to voice any concerns to both the Planning Commission and City Commission prior to approval;*
- *The proposed amendment is made necessary because of changing technology relating to new planning concepts in the C-2 and C-4 zones.*

City Attorney Jeff Chubb was present and indicated that the actions of the Planning Commission and the modified motion met the requirements of 1604.1 and 1604.2.

**BUDGET IMPACT** N/A

**SUGGESTED MOTION** I move approve the modified recommendation of the Planning Commission and adopt an ordinance to modify “Communication Towers” in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit.

**SUPPORTING DOCUMENTS**

1. July 2, 2019 Staff Report to the Planning Commission
2. July 1, 2019 Correspondence with Lisa Richards
3. Memo from City Attorney
4. Proposed Ordinance

## **Planning Commission**

- b. Reconsider text amendments to Appendix B-Zoning of the City Code relating to:
  1. Article IV. Rules and Definitions.
  2. Article VI. Supplementary District Regulations
  3. Article X. Special provisions applying to miscellaneous conditional uses; and
  4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Communication Towers".

A public hearing was held by the Planning Commission on May 7, 2019. After the public hearing was concluded, the following motion was made as included in the approved Planning Commission minutes:

*Andy McLenon moved to recommend modifying "Communication Towers" in the permitted and conditional use table to add C- 2 and C- 4 as permitted zoning districts for this use with a conditional use permit. The motion was seconded by Barb Emert. The motion carried 8- 0.*

This recommendation was forwarded to the City Commission for action at their June 13, 2019 meeting. At that meeting Lisa Richards appeared and indicated that she did not feel the information provided in the staff report and the motion met the requirements of Section 1604.1 and 1604.2 which state:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

The City Commission tabled action and sent this item back to the Planning Commission for reconsideration.

While the staff report to the Planning Commission did include these sections, it did not include a recommendation with a statement as required in section 1604.2. I apologize for this oversight.

If the Planning Commission wishes to resubmit approval of the previous motion to modify “Communication Towers” in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit, then it is recommended that the following be added to the motion:

- a. That such change is consistent with the intent and purpose of these regulations;
- b. That the areas which are most likely to be directly affected by such change will include the C-2 and C-4 zones which will allow communication towers with a conditional use permit which does provide an opportunity for property owners within the notification area to voice any concerns to both the Planning Commission and City Commission prior to approval;
- c. The proposed amendment is made necessary because of changing technology relating to new planning concepts in the C-2 and C-4 zones.

While this text amendment was initiated due to a local utility needing to upgrade the technology of their communication system, this decision does affect all C-2 and C-4 zones. However, as noted in the original staff report *“...if this text amendment is ultimately approved by the Commission, it would still require Westar [or any other applicant] to go through the conditional use permit process, which is similar to the rezoning process. A public hearing would need to be held before the Planning Commission, and their recommendation would be forwarded to the City Commission for final consideration. The recommendation from the Planning Commission could include additional conditions. If the City Commission approved the conditional use permit, they could also modify the conditions recommended.”* It should also be noted that there are also special provisions applying to miscellaneous conditional uses for “Communication antenna or communication towers” in Section 1014.0 of the zoning code that provide additional regulations.

In addition to the option of revising the original recommended as recommended above, the Planning Commission also has the option of modifying their original recommendation to not allow communication towers in a C-2 or C-4 with a conditional use permit. In which case, Westar or any other businesses within those zones would not be allowed to request a conditional use permit for a communication tower and would either have to request rezoning or relocate the tower to another location.

Included for your reference are the following documents:

1. Request for Commission Action (RCA) to the City Commission for their June 13, 2019 meeting.
2. Staff report to the Planning Commission for their May 7, 2019 meeting.
3. Minutes of the May 7, 2019 meeting.
4. Section 1014.0 – Communication antenna or communication towers.
5. Related definitions from Section 403.0.



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**June 13, 2019**

Department Administration

Director Approval *Kelly Passauer*

**AGENDA ITEM** Consider text amendments to Appendix B-Zoning of the City Code including Appendix A. "Listing of Permitted and Conditional Uses" regarding "Communication Towers".

**SUMMARY RECOMMENDATION** Approve the text amendment.

**BACKGROUND** On April 11, 2019 the City Commission initiated a public hearing at the request of City staff. City staff had been in contact with a representative of a tower company requesting to place a communication tower at the Westar location at 1101 E. Main Street which is zoned C-2. Communications towers are only allowed as conditional uses in A-1 and M-2 districts. Therefore, the options to resolve this include a text amendment to allow communication towers as a conditional use in a C-2 zone, or the applicant could request rezoning to M-2 with a conditional use permit. Below is a map of this area which shows the adjacent properties to be either commercially or residentially zoned:



Below is the current permitted and conditional use table as it relates to Communication antenna and Communication towers.

**Legend:**

P = Permitted Use

C = Conditional Use

Land Use Category	Code	Permitted Zoning District												
		A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2
Communication antenna		C							C	C	C	C		C
Communication towers		C												C

The Planning Commission at their May 7, 2019 meeting unanimously recommended modifying “Communication Towers” in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit.

**BUDGET IMPACT** No direct budget impact.

**SUGGESTED MOTION** I move approve the recommendation of the Planning Commission and adopt an ordinance to modify “Communication Towers” in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit.

## SUPPORTING DOCUMENTS

1. May 7, 2019 Staff Report to the Planning Commission
2. Proposed Ordinance

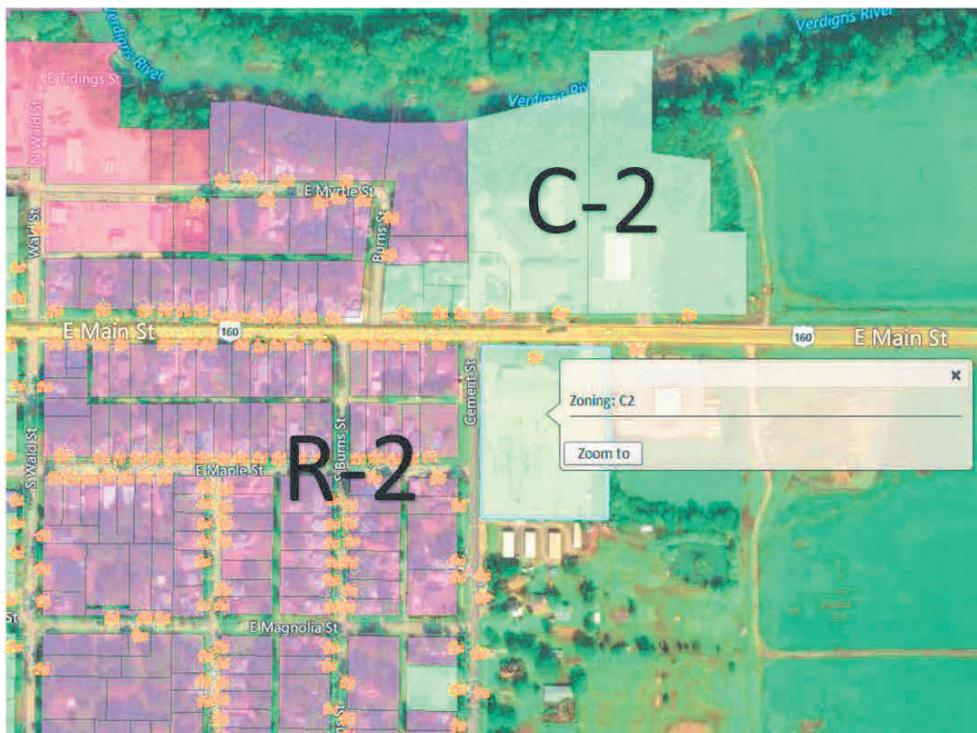
## Planning Commission

### b. Public hearings to consider text amendments to Appendix B-Zoning of the City Code relating to:

1. Article IV. Rules and Definitions.
2. Article VI. Supplementary District Regulations
3. Article X. Special provisions applying to miscellaneous conditional uses; and
4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Communication Towers".

#### *Request from Tower Company Representative*

On April 11, 2019 the City Commission initiated this public hearing at the request of City staff. City staff had been in contact with a representative of a tower company requesting to place a communication tower at the Westar location at 1101 E. Main Street which is zoned C-2. Communications towers are only allowed as conditional uses in A-1 and M-2 districts. Therefore, the options to resolve this include a text amendment to allow communication towers as a conditional use in a C-2 zone, or the applicant could request rezoning to M-2 with a conditional use permit. Below is a map of this area which shows the adjacent properties to be either commercially or residentially zoned:



Specifically, the recommended modification is:

1. Modify "Communication Towers" in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit.

See table below:

Legend:

P = Permitted Use

C = Conditional Use

Land Use Category	Code	Permitted Zoning District												
		A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2
Communication antenna		C							C	C	C	C		C
Communication towers		C												C

City code 1604.2 provides the following regarding text amendments:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

It should be noted that if this text amendment is ultimately approved by the Commission, it would still require Westar to go through the conditional use permit process, which is similar to the rezoning process. A public hearing would need to be held before the Planning Commission, and their recommendation would be forwarded to the City Commission for final consideration. The recommendation from the Planning Commission could include additional conditions. If the City Commission approved the conditional use permit, they could also modify the conditions recommended.

City of Independence, Kansas

**NOTICE TO THE PUBLIC**

The Independence, Kansas, Planning Commission will conduct public hearings on:

Tuesday, May 7, 2019, at 5:30 p.m.

To receive comments to consider text amendments to Appendix B-Zoning of the City code including, but not limited to:

1. Article IV. Rules and Definitions.
2. Article VI. Supplementary District Regulations
3. Article X. Special provisions applying to miscellaneous conditional uses; and
4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Communication Towers";

**Case Number:**

2019/ZA/02

The hearing will be conducted in the Veterans Room, Memorial Hall, 410 North Pennsylvania Avenue, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend and they will be heard. Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer  
Zoning Administrator  
811 W Laurel Street  
Independence, KS 67301  
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

Kelly Passauer, Zoning Administrator

**ORDINANCE NO. \_\_\_\_\_**

**An Ordinance Amending the Zoning Code**

*BE IT ORDAINED* by the Governing Body of the City of Independence, Kansas:

**Section 1.** The Zoning Code, Appendix A. – Listing of Permitted and Conditional Uses, is hereby amended as follows:

a. Under the land use category “Communication towers”, add that this land use shall be a conditional use under both the C-2 and C-4 zoning districts.

**Section 2.** This Ordinance shall take effect upon its publication in the official City newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 13th day of June, 2019.*

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LOUIS YSUSI, Mayor

ATTEST:

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DAVID W. SCHWENKER, City Clerk

## MINUTES

Independence Planning Commission

Independence Board of Zoning Appeals

Tuesday, May 7, 2019

Veterans Room

Memorial Hall

5:30 p.m.

### **Call to Order**

### **Planning Commissioner Present**

Mary Jo Meier, Steve McBride, Tony Royse, Philipp Umlauf, Michelle Anderson, Barb Emert, Brent Littleton (outside), and Andy McLenon (outside).

### **Planning Commissioners Absent**

Brian Beecham

### **Staff Present**

Kelly Passauer, Assistant City Manager/Zoning Administrator

### **Visitors**

None.

### **Minutes**

- a. Consider approving minutes from the April 2, 2019 meeting.

Tony Royse made a motion to approve the minutes of the April 2, 2019 meeting, Michelle Anderson seconded the motion. The motion carried 7-0 (Brent Littleton arrived after this item was approved).

### **Planning Commission**

- b. Public hearings to consider text amendments to Appendix B-Zoning of the City Code

relating to:

1. Article IV. Rules and Definitions.
2. Article VI. Supplementary District Regulations
3. Article X. Special provisions applying to miscellaneous conditional uses; and
4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Communication Towers".

The following staff report was previously provided and summarized by Chair Mary Jo Meier:

### ***Request from Tower Company Representative***

On April 11, 2019 the City Commission initiated this public hearing at the request of City staff. City staff had been in contact with a representative of a tower company requesting to place a communication tower at the Westar location at 1101 E. Main Street which is zoned C-2. Communications towers are only allowed as conditional uses in A-1 and M-2 districts. Therefore, the options to resolve this include a text amendment to allow communication towers as a conditional use in a C-2 zone, or the applicant could request rezoning to M-2 with a conditional use permit. Below is a map of this area which shows the adjacent properties to be either commercially or residentially zoned:



Specifically, the recommended modification is:

1. Modify “Communication Towers” in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit.

See table below:

Land Use Category	Code	Permitted Zoning District												
		A-1	R-1	R-2	R-3	R-4	R-5	D/P	C-1	C-2	C-3	C-4	M-1	M-2
Communication antenna	C								C	C	C	C		C
Communication towers	C													C

City code 1604.2 provides the following regarding text amendments:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

It should be noted that if this text amendment is ultimately approved by the Commission, it would still require Westar to go through the conditional use permit process, which is similar to the rezoning process. A public hearing would need to be held before the Planning Commission, and their recommendation would be forwarded to the City Commission for final consideration. The recommendation from the Planning Commission could include additional conditions. If the City Commission approved the conditional use permit, they could also modify the conditions recommended.

Andy McLenon moved to recommend modifying “Communication Towers” in the permitted and conditional use table to add C-2 and C-4 as permitted zoning districts for this use with a conditional use permit. The motion was seconded by Barb Emert. The motion carried 8-0.

- c. Consider a request to rezone a tract of land from O & P, Office and Professional District to C-1, Neighborhood Business District at 309 East Chestnut Street.

Staff advised that they were contacted by the applicant who wished to rescind this request. City staff recommended not rezoning this tract at this time.

On a motion by Andy McLenon, seconded by Tony Royse, the Planning Commission denied the request to rezone 309 East Chestnut Street from O & P to C-1 based on the applicant withdrawing the request. The motion carried 8-0.

d. Consider initiating a public hearing to consider a text amendment to Appendix B-Zoning of the City Code relating to:

1. Article IV. Rules and Definitions.
2. Article VI. Supplementary District Regulations
3. Article X. Special provisions applying to miscellaneous conditional uses; and
4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Bed and breakfast", "Boarding and rooming houses" and other new additional uses.

City staff discussed updating the permitted and conditional use table as it relates to the above listed uses, and other similar type uses relating to short term rentals which the Planning Commission may wish to add to the permitted and conditional use table. City staff recommended initiating a public hearing as recommended.

Barb Emert moved to initiate a public hearing to consider a text amendment to Appendix B-Zoning of the City Code relating to:

1. Article IV. Rules and Definitions.
2. Article VI. Supplementary District Regulations
3. Article X. Special provisions applying to miscellaneous conditional uses; and
4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Bed and breakfast", "Boarding and rooming houses" and other new additional uses.

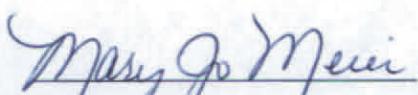
The motion was seconded by Tony Royse. The motion carried 8-0.

#### **Board of Zoning Appeals**

e. None.

#### **Adjournment**

The meeting was adjourned with a motion by Andy McLenon, seconded by Philipp Umlauf. The motion carried 8-0.



Mary Jo Meier, Chair



Andy McLenon, Secretary

1014.0. - Communication antenna or communication towers.

(a) *Conditional use application-submission requirements.*

1. The following items shall be submitted in support of an application for a conditional use permit request pursuant to article IX of appendix B of the Code of the City of Independence.
  - a. Legal description of the property that is covered by the application for a conditional use permit.
  - b. Written authorization from the property owner of the host tower site unless the site is owned by the applicant.
  - c. A statement of the reasons why the conditional use permit is being requested.
  - d. A site plan or preliminary development plan, whichever is in the opinion of the zoning administrator necessary in order for the city staff, planning commission and governing body to properly evaluate the application. If a preliminary development plan is not required the zoning administrator shall specify in writing the information to be included in the required site plan. notwithstanding a determination by the zoning administrator that only a site plan is required, the planning commission or governing body may require the submission of a preliminary development plan prior to taking action on the application. If required the development plan shall include, but not limited to, the following:
    - i. A site plan drawn to a scale of one inch equals 30' or larger and identifying the site boundary, tower location, guide wire anchors, existing and proposed structures, existing vegetation and proposed landscaping and use, structures and land use designations on the site and the abutting parcels.
    - ii. Location of access roads, fencing and type, parking area.
    - iii. Proposed lighting and exterior lighting specifications.
    - iv. Land elevation contours.
    - v. Details of any proposed building, its elevations and proposed use of the building.
  - e. A statement that alternate sites or communication towers within ½ mile radius of the subject site are not available for one or more of the following reasons when such reasons are applicable.
    - i. Unwillingness of the owners of the alternate sites or owners of existing or approved communication towers or structures capable of accommodating applicant's planned equipment to entertain applicant's communication facility proposal.
    - ii. Topographic limitation of alternate sites.
    - iii. Impediments adjacent to existing or approved communication towers that would obstruct adequate communication tower transmission.
    - iv. Physical site constraints that would preclude the construction of a communication tower.
    - v. Technical limitation of the communication transmission system.
    - vi. The applicant's planned equipment would exceed the structural capacity of existing and approved towers, facilities and structures, generally capable of accommodating a communication transmission system, considering existing and planned use of such communication towers and facilities and structures.
    - vii. The applicant's planned equipment would cause radio or frequency interference with other existing or planned communication towers or facilities, which cannot be reasonably prevented.

- viii. Existing or approved communication towers or facilities do not have space on which applicant's planned equipment can be placed so it can function effectively and reasonably.
  - ix. That the applicant demonstrates that there are other limiting factors that render existing communication towers, facilities and structures unsuitable.
  - x. The owner's facilities and transmission demands on structures.
- f. Assurance of adequate public facilities.

2. Each application for a conditional use permit for a communication tower shall be accompanied by the following information:

- a. A preliminary development plan as required above in section 1.d.i.
- b. A report from a licensed professional engineer that describes the communication tower's proposed capacity, including the number and type of communication antennas it can accommodate.
- c. A study comparing all potential host sites within an approximate ½ mile radius of the subject site. Potential sites shall include existing structures and communication towers in excess of 100' and properties on which communication towers are permitted by right or by conditional use permit. The zoning administrator, the planning commission or the governing body may require the review of additional sites pending review of the initial study. The study shall include a description of the surrounding sites, a discussion of the ability or inability of the site to host a communication facility and the reason why the site was excluded from consideration.
- d. A photo simulation of the proposed facility of a type and quality as determined by the city to be appropriate.
- e. A map identifying the service area of the proposed tower and an explanation of the need for the tower to maintain the integrity of the system.
- f. A signed statement from the applicant indicating its intention to share space on the communication tower with other providers at reasonable cost and its acknowledgment that the conditional use permit shall be issued subject to the condition that the applicant make good faith efforts to offer space on the communication tower at reasonable cost and that the governing body shall have the right to revoke the conditional use permit if it determines at a public hearing that offers to share space at a reasonable cost are not made.
- g. An engineer certification that anticipated levels of electromagnetic radiation to be generated by the communication facilities on the site including the effective radiated power (ERP) or the communication's antenna shall be within the guidelines established by the Federal Communications Commission.

3. The following performance standards shall apply to all communication towers allowed by a conditional use permit:

- a. The maximum communication tower height that may be approved is 175'. A lightening rod, not to exceed ten feet shall not be included within the height limitations. All new communication towers in excess of 100' shall be designed to accommodate at least two additional providers. The location of additional communication antennas on a legally existing communication tower shall not require additional approval from the planning commission or governing body.
- b. All communication towers shall maintain a galvanized finish to be painted gray or light blue unless otherwise required by the governing body or if other standards are required by the Federal Aviation Administration. All communication towers and facilities shall be sited to have the least practical adverse affect on the surrounding environment. In addition, communication towers should be designed to avoid whenever possible, the application of the Federal Aviation Administration lighting and painting requirements.

- c. Site location development should preserve the preexisting character of the site as much as possible. Existing vegetation should be preserved or improved and disturbance of the existing topography of the site should be minimized unless such disturbance would result in less visual impact on the site on the surrounding area.
- d. The area covered by the application for a communication tower special use permit shall be sufficient to accommodate all communication facilities that can be accommodated on the proposed communication tower.
- e. Communication towers and accessory buildings shall meet the setback requirements of the zoning district in which they are located, unless greater setbacks are required by the governing body. The setback requirements for communication towers locating on or adjoining residentially zoned property shall be determined at the time at the consideration of the conditional use permit. All communication towers, except those designed as an architecturally compatible elements in terms of material design and height of the existing or proposed use of the property shall be set back a minimum of 200' from any surrounding property that is zoned for single family residences, duplex residences or multifamily residences. Provided however that the distance may be reduced or waived by the governing body.
- f. All communication towers except those designed as an architecturally compatible element in terms of material, design and height of the existing or proposed use of the property shall comply with the following separation requirements:

Towers in Excess of 100'	1,500'
Towers 100' or Less	750'

- g. The governing body may grant a deviation from the height, setback and/or separation requirements. In support of a request for a deviation from the separation requirements the applicant shall submit a technical study acceptable to the city which confirms that there are no other suitable sites available within the separation requirements. A deviation shall only be granted if the governing body determines that the deviation will not undermine the spirit and intent of this ordinance.
- h. All parking areas and drives associated with the communication facility shall comply with article VII of the zoning ordinance and shall meet all provisions of article VII of the zoning ordinance.
- i. Mobile or immobile equipment not used in direct support of a communication facility shall not be stored or parked on the site unless repairs to the communication facility are being made.
- j. Accessory uses shall include only such buildings and facilities necessary for transmission functions and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas or other similar uses not necessary for the transmission function. All accessory buildings shall be constructed of building materials consistent with the primary use of the site, if the site has a primary use other than a communication tower and shall be subject to site plan approval. The site plan requirements shall contain the information as required in this ordinance.

- k. Communication towers shall only be illuminated as required by the Federal Communication Commission and/or the Federal Aviation Administration. Security lighting around the base of the communication tower may be provided if the lighting is shielded so that no light is directed towards adjacent properties or rights-of-way.
- l. All communication towers must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission and any other agency of the federal government with the authority to regulate communication towers and antennas. As such standards and regulations change the owners of such towers and antennas governed by this ordinance shall bring such towers and communication antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring such towers and antennas into compliance with such revised standards and regulations shall constitute grounds for removal of such tower or antennas at the owner's expense.
- m. In areas of the city where the cables, wires and other facilities of public utilities exist underground or are required by the city to be placed underground, the applicant shall also place all cables, wires and other facilities associated with the communication facility underground.
- n. The base of the communication tower shall be screened from view with a solid screening fence a minimum of six inches in height. The materials of the fence, including any proposed razor wire or other security wire, shall be subject to the review of the planning commission and approval of the governing body. The governing body may waive the required screening if the design of the accessory building is architecturally compatible with the primary use of the property.
- o. A landscape plan shall be required which will provide a continuous landscaped area around the perimeter of the accessory building or screening wall. All plant materials shall include a mixture of deciduous and coniferous planting materials. Drought tolerant plant materials are encouraged. The visual impact of the equipment building would be minimal, the landscaping requirement may be reduced or waived by the governing body.
- p. Any communication antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and the owner of such communication antenna or tower shall remove the same within 90 days of receipt of notice notifying the owner of such abandonment. If such communication antenna or tower is not removed within 90 days the city may remove such communication antenna or tower at the owner's expense. If there are two or more users on a single communication tower then this provision shall not become effective until all users cease using the communication tower.
- q. To ensure the structural integrity of communication towers, the owners of the communication tower shall ensure that it is constructed and maintained in compliance with the standards contained in applicable and local building codes and the applicable standards for towers that are imposed by the Electronics Industries Association as amended from time to time. If, upon inspection, the building inspector concludes that the communication tower fails to comply with such codes and standards and constitute a danger to persons or property, then upon notice being provided to the owner of the communication tower, the owner shall have 30 days to bring such communication tower into compliance with such standards. If the owner fails to bring such communication tower into compliance within the 30 days the city may cause removal of such communication tower at the owner's expense.
- r. At least every 12 months the communication tower shall be inspected by an expert who is regularly involved in the maintenance, inspection and/or erection of communication towers as approved by the city. At a minimum this inspection shall be conducted in accordance with the tower inspection checklist provided in the Electronic Industries Association (EIA)

Standard 222; "Structural Standards for Steel Antennas Towers and Antenna Support Structures". A copy of such inspection record shall be provided to the city.

- s. In the case of any disturbance to a street or other public property, caused by an applicant during the course of constructing or maintaining this communication facility the applicant shall at its own expense, replace or restore all paving, sidewalk, driveway, landscaping, or surface of any street or other public property damaged to as good or better condition as before the disturbance and in accordance with applicable federal, state and local laws, rules, regulations or administrative decisions. The duty to restore the street or public property shall include the repair of any area identified by the city as being weakened or damaged as a result of cutting or other invasion of the pavement of a street or other public property.
4. Every communication tower shall be subject to administrative review by the city after three years regardless of the approved term (if any) of the conditional use permit or the date such communication tower was installed. Reviews will subsequently be required every three years or thereafter. At the time of this review the holder of the conditional use permit shall demonstrate to the satisfaction of the city that:
  - a. The general appearance of the communication tower has been adequately maintained. This shall include landscaping, fencing, surfacing, communication tower appearance, etc.
  - b. The structural integrity of the communication tower is uncompromised. A report from a licensed professional engineer shall be submitted by the holder of the conditional use permit certifying such structural integrity.
  - c. A good faith effort has been made to cooperate with other providers to establish co-location at the tower site. A good faith effort shall include, but is not limited to, a timely response to co-location inquiries from other providers and sharing of technical information to evaluate the feasibility of establishing co-location.
  - d. The city may request that the holder of the conditional use permit hire a qualified third party to prepare a report providing measurements of radio frequency radiation emissions and certifying compliance with all applicable regulations.
5. A tower permit may not be sold, transferred, leased nor assigned by any other person without the prior notification of the governing body.
6. In addition to the factors for consideration of a conditional use permit application under section 902.2 of the zoning ordinance, the planning commission may recommend approval of the conditional use permit, and the governing body may approve such permit for a communications tower, utilizing, but not limited to, the following factors as guidelines:
  - a. Whether approval of the conditional use would be consistent with the intent and purpose of, and meets the requirements of, these regulations.
  - b. The aesthetic impact of the proposed communication tower on the surrounding neighborhood.
  - c. Whether the relative gain to the public health, safety and general welfare outweighs the hardship imposed upon the applicant by not granting the permit.
  - d. Whether the positions of the applicant and/or the opponents are substantiated by substantial competent evidence or rather generalized concerns or unsubstantiated claims are made to the planning and zoning commission and/or city commission.
  - e. Whether an F.C.C. license has been granted to the applicant authorizing provision of wireless services to the community and whether radio frequency emissions will comply with F.C.C. regulations.
  - f. Whether there is an existing tower upon which the applicant can co-locate and if so, what substantiated efforts have been made by applicant for co-location and upon what basis were any such towers deemed unacceptable by the applicant.

- g. Will the tower adversely impact adjoining property values, present a hazard to air space, negatively impact the environment, traffic or in any other manner create negative impacts upon the neighborhood or community.
- h. The recommendation of professional planning staff.
- i. The expert testimony presented on behalf of and in opposition to the application.
- j. Such other factors as may be relevant to the facts and evidence presented in the application.

Failure to adequately demonstrate adequate compliance on any one of these items shall subject the holder of the permit to revocation of the conditional use permit. The determination of whether or not to revoke the conditional use permit shall be made by the governing body after a public hearing requiring 30 days notice unless an emergency situation exists.

(Ord. No. 3919, § 2, 4-8-04)

## Related Definitions from Section 403.0 of the Zoning Code

**Communication antenna:** An antenna or array of antennas at one location intended to broadcast and receive signals as part of a wide-area, communication system such as cellular telephone systems, pager systems or wireless computer networks, but excluding short-wave radio antennas operated primarily as a hobby.

**Communication facility:** A land use facility supporting antennas and microwave dishes that sends and/or receives radio frequencies signals. communication facility shall include structures or communication towers, antennas, associated structures and accessory buildings.

**Communication tower:** A ground mounted or self-supported, guyed, lattice or monopole tower, constructed as a free-standing structure or in association with a building, other permanent structure or equipment, constructed to support one or more antennas; provided that, for purposes of this ordinance, the term "communication tower" shall not include any tower that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.

1. Guyed tower: A communication tower that is supported, in whole or in part, by guy wires and ground anchors.
2. Lattice tower: A guyed or self-supporting three or four sided, open, steel frame communication tower.
3. Monopole tower: A communication tower consisting of a single pole, constructed without guy wires and ground anchors.

**Communication tower height:** The vertical distance measured from the base of the communication tower at grade to the highest point of the communication tower. If the communication tower is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the communication tower height.

**Conditional use:** A use that is permitted, but only by application to the building inspector as designated in each specific instance, and after a determination by the planning commission and city commission that all regulations and standards of this ordinance applying to the specific use in the particular location will be met, along with such additional conditions or safeguards as the city commission may prescribe in the specific case and circumstances, in order to prevent harm or injury to adjacent uses, the neighborhood, and/or in order to improve the public health.

**From:** [Lisa Thomas](#)  
**To:** [Kelly Passauer](#)  
**Subject:** PC meeting July 2, 2019 re Text Amendments to Appendix A and B of Zoning Code (Towers)  
**Date:** Monday, July 01, 2019 10:08:54 AM

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Hi Kelly,

Unfortunately I am out of town and cannot attend this PC meeting. I read your staff report, and have a couple of comments that if at all possible I would like you to rely to the PC.

The statement you have drafted is a step in the right direction. My point to the Commission was that a substantial discussion of the points is needed, the gist of which is then conveyed to the Commission, per the code. Each of the three items a, b, and c under 1604.2 is analyzed. *How* is the change consistent with the intent and purpose of the planning code? Which actual areas of the City are affected and how are they affected? How does new technology really warrant the inclusion of communication towers in C-2 and C-4 zones? What new planning concepts, etc.?

We don't want to just identify a specific end result, and then work to justify that result in making a code change. While it is true that a Conditional Use Permit will be required for towers, there are reasons why they were prohibited in some places in the first place. I think that's why the PC should justify the changes and explain their analysis.

Thanks for your patience and assistance Kelly. I look forward to speaking with you when I get back.

Lisa Richard (nee Thomas)

# Informational Memorandum

FROM THE DESK OF:

JEFFREY A. CHUBB  
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**TO:** City Commissioners  
**FROM:** Jeff Chubb  
**DATE:** July 8, 2019  
**RE:** Planning Commission Meetings on May 7 and July 2, 2019 - Communication Towers

This memo is to certify that the Planning Commission met on Tuesday, July 2, 2019 for the purpose of revisiting a requested text amendment to the zoning use table regarding communication towers. The request was to add communication towers as a conditional use to the C-2 and C-4 zoning districts. In order to do so, the Planning Commission was required to adhere to the provisions of City Code Sections 1604.1 and 1604.2. In particular, the Planning Commission was to state the reasons for it's recommendation as required by 1604.1 and to address three specific issues delineated in 1604.2.

Although the minutes from the May 7, 2019 meeting may not reflect that the Planning Commission had a thorough discussion, it was clear from my attendance at the July 2, 2019 meeting that a thorough discussion was had both at the May 7 and July 2 meetings. It's just that the minutes were conclusory in nature and did not give the full breadth of the discussion, thus leading to the complaint that had been made.

I have reviewed the RCA for the July 11 meeting which contains the recommendation of the Planning Commission. It is my opinion that the wording of the recommendation is sufficient under the applicable City Ordinances should you choose to adopt that recommendation.

**ORDINANCE NO. 4301**

**An Ordinance Amending the Zoning Code**

*BE IT ORDAINED* by the Governing Body of the City of Independence, Kansas:

**Section 1.** The Zoning Code, Appendix A. – Listing of Permitted and Conditional Uses, is hereby amended as follows:

a. Under the land use category “Communication towers”, add that this land use shall be a conditional use under both the C-2 and C-4 zoning districts.

**Section 2.** This Ordinance shall take effect upon its publication in the official City newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 11th day of July, 2019.*

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LOUIS YSUSI, Mayor

ATTEST:

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DAVID W. SCHWENKER, City Clerk