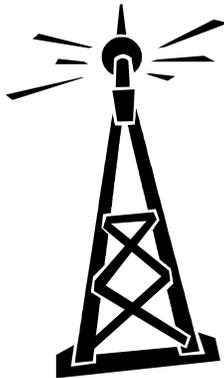


ANTENNA TOWER ORDINANCE



**CITY OF PASADENA
PLANNING DEPARTMENT
(713) 475-5543**

ARTICLE XI. ANTENNA TOWER REGULATIONS

Sec. 9-201. Definitions.

- (a) In this section the following words and terms shall have the meaning ascribed:
- (1) *Alteration* means any modification, replacement, or reconstruction that increases the height or materially increases the dimension of a tower structure.
 - (2) *Director* means the planning director or director's designee as executive officer of the city's planning commission.
 - (3) *Grade* means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and a line five (5) feet from the building or structure.
 - (4) *Height of building* means the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater height of building:
 - a. The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than ten (10) feet above the lowest grade.
 - b. An elevation of ten (10) feet higher than the lowest grade when the sidewalk or ground surface described in paragraph a. above is more than ten (10) feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building.

- (5) *Height of tower* means the vertical distance between the finished grade at the base of the tower or the lowest point of contact with the building, and the highest point of the tower structure, excluding the antennae.
- (6) *Monopole* means a single, slender and typically cylindrical, vertical structure to which antennae are affixed.
- (7) *Public utility* means any person, company, corporation, cooperative corporation, partnership, or any combination thereof, that is subject to both a municipal franchise agreement and the comprehensive regulatory system established by and defined in the Texas Public Utility Regulatory Act, that owns or operates for compensation equipment or facilities for:
 - a. Producing, generating, transmitting, distributing, selling, or furnishing electricity; or

- b. The conveyance, transmission, or reception of communications over a telephone system as a dominant carrier.

The term "public utility" shall not include, as is defined in the Public Utility Regulatory Act, telegraph services, television stations, radio stations, community antenna television services, general radio-telephone services, or radio-telephone services authorized under the Public Mobile Radio Services Rules of the Federal Communications Commission or private water companies.

- (8) *Residence* means any permanent building or structure containing habitable rooms for nontransient occupancy, designed and used primarily for living, sleeping, cooking, and eating, which is intended to be used or occupied as a dwelling place for residential purposes, whether or not detached, including homes, townhomes, patiohomes, duplexes, triplexes, quadraplexes and condominiums; provided, however, residences shall not include apartment buildings with more than four (4) units. Hotels, motels, boardinghouses, apartment buildings with more than four (4) units, group homes, halfway houses, nursing homes, hospitals, nursery schools, schools, and child care facilities shall not be considered residences. A building or structure located on a lot or tract of land used as the site of a tower shall not be considered a residence so long as its primary use is to contain, house, store, and protect materials or equipment directly related to the purpose and use of the tower.
- (9) *Residential* means pertaining to the use of land for a residence as is defined in this section.
- (10) *Residential lot* means:
 - a. A lot which is included within a recorded residential subdivision subject to any enforceable, valid and unexpired residential deed restrictions upon which a residence exists or may be constructed pursuant to those valid and applicable deed restrictions; or
 - b. An unrestricted lot upon which a residence exists.
- (11) *Residential restrictions* means one (1) or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, deed, judgment or other instrument filed in the county real property records, map records, or deed records.
- (12) *Subdivision* means all land encompassed within one (1) or more maps or plats of land within the city that is divided into two (2) or more parts and are recorded in the deed, map, or real property records of the county or counties in which the land covered by the map or plat is located.
- (13) *Tower or tower structure* means a fixed, freestanding or guyed, uninhabitable structure, not designed as a shelter or to be occupied for any use. This definition includes, but is not limited to, any such structure supporting antennae that transmit or receive any portion of the electromagnetic spectrum of radio waves. The following are, by way of example but not limitation, towers or tower structures: guyed or freestanding monopole structures, lattice or open framed

structures, antennae supports, water towers, and other similar self-supporting, trussed, or open framed structures.

- (14) *Calendar days* means any day including Saturdays, Sundays, and scheduled holidays designated by city council.
- (15) *Residential neighborhood* means:
- a. Any subdivision wherein a majority of the total number of lots, tracts, parcels, or sites are occupied by residences and from such living units commercial activities are not generally carried out; or
 - b. Any subdivision which is burdened by restrictions which limit the lots, tracts, parcels, and sites within the subdivision so that a majority of such lots, tracts, parcels, or sites may be occupied by only a residence and from such living units commercial activities are not generally carried out; provided however, that for any block in the residential neighborhood therein where a majority of the occupied lots, tracts, parcels, or sites are used for commercial, business, or industrial purposes, such block shall not be considered a "residential neighborhood."
- (16) *Schools* means any primary/intermediate/secondary or higher educational institution whether public or private.
- (17) *Day care centers* means any facility whether or not known or incorporated under such descriptive title or name such as nursery school, kindergarten, playschool, child development center or early childhood center which cares for thirteen (13) or more children for less than twenty-four (24) hours.
- (18) *Apartments* means dwelling units for multifamily in excess of four (4) units.
(Ord. No. 97-57, 3-25-97; Ord. No. 98-68, § 1(9-1), 4-14-98)

Sec. 9-202. Tower permit required.

(a) An application for a tower permit shall be submitted to the building official and approved in accordance with the provisions of this article prior to the construction, placement, or alteration of any tower or tower structure, as defined in this article and not specifically excluded herein, that is located within the boundaries of the municipality.

(b) A tower permit shall not be required for any tower repaired, replaced, or modified with no resulting increase in height or dimension and any tower repaired, replaced, or modified in order to comply with the requirements of any statute, regulation, order, or rule of the Federal Communications Commission, the Federal Aviation Administration, or any other federal, state, or other governmental agency or authority.
(Ord. No. 97-57, 3-25-97)

Sec. 9-203. Exemptions.

This article does not apply to the following structures:

- (a) Church bell towers and religious symbols associated with a place of worship;
- (b) Tower structures less than twenty (20) feet in height;
- (c) Monopole tower structures less than thirty (30) feet in height;
- (d) Tower structures used primarily for the support of amateur and citizens' band radio antennae and meeting subsection (b) above;
- (e) Tower structures that are attached to, placed upon, or constructed on top of a building provided that the height of the tower structure does not exceed ten (10) feet or the height of the building upon which the tower is constructed, whichever is less;
- (f) Tower structures on real property owned, leased, held or used, or dedicated for use by a public utility for rendering its service, such as tower structures being used primarily for the transmission of electrical power by a public utility or the conveyance of communications over a telephone wire-line system operated by a public utility;
- (g) High mast monopole structures built, owned or maintained by the Texas Department of Transportation, Harris County, or the City of Pasadena; and
- (h) Tower structures constructed or placed on land or other structures owned, leased, held, or dedicated for use by the Texas Department of Public Safety, Harris County, the City of Pasadena or other governmental entities or agencies, which land or other structures are used by such governmental entity or agency primarily for rendering fire, police, or other public protection services notwithstanding that such tower structures may be used jointly by such governmental entity or agency and any other public or private person or entity for other and additional public or private purposes.

(Ord. No. 97-57, 3-25-97)

Sec. 9-204. Location of towers.

(a) No tower permit shall be approved or a building permit issued unless the proposed tower is in compliance with the applicable provisions governing distance requirements, which are as follows:

- (1) The distance between the base of a single monopole tower, constructed without guy wire attachments, and all residential lots, schools, day care centers and apartments within a residential neighborhood must not be less than:

- a. One and one-half ($1 \frac{1}{2}$) times the height of the tower structure if the height of that tower structure is over sixty (60) feet, but not over ninety (90) feet;
 - b. Two (2) times the height of the tower structure if the height of that tower structure is over ninety (90) feet, but not over one hundred five (105) feet;
 - c. Two and one-half ($2 \frac{1}{2}$) times the height of the tower structure if the height of that tower structure is over one hundred five (105) feet, but not over one hundred twenty (120) feet; or
 - d. Three (3) times the height of the tower structure if the height of that tower structure is over one hundred twenty (120) feet.
- (2) The distance between the base of a lattice tower, a guyed monopole tower, or any other tower structure and all residential lots, schools, day care centers and apartments within a residential neighborhood must not be less than:
- a. Three (3) times the height of the tower structure if the height of that tower structure is over forty-five (45) feet, but not over eighty-five (85) feet;
 - b. Three and one-half ($3 \frac{1}{2}$) times the height of the tower structure if the height of that tower structure is over eighty-five (85) feet, but not over one hundred twenty (120) feet;
 - c. Four (4) times the height of the tower structure if the height of that tower structure is over one hundred twenty (120) feet, but not over one hundred fifty (150) feet; or
 - d. The lesser of:
 - (i) Three (3) times the height of the tower structure; or
 - (ii) One thousand five hundred (1,500) feet if the height of that tower structure is over one hundred fifty (150) feet.

(b) All tower permit applications submitted to the city which includes a survey which meets the minimum standards as set forth by the Texas Board of Professional Land Surveyors. All properties within the required setback distance radius can use the distance of a straight horizontal line from the center of the base of the tower to the nearest outside wall of the residential structure on the lot for the setback distance measurement. All other distance measurements referred to in this section, except for those defined in subsection (c), shall be the distance of a straight horizontal line from the center of the base of the tower to the radial tangent of the residential lot.

(c) If the tower is constructed, attached to, or placed on a building or similar structure built and designed primarily for the purpose of supporting the tower, then subsection (a) shall apply. The survey provided by the applicant shall be measured from

the horizontal distance between the radial tangent of the residential lot and the point on finished grade where a vertical line from the center of the base of the tower strikes the grade.

(d) The requirements of subsection (a) do not apply if the applicant provides a notarized affidavit, on a form approved by the building official, of all owners of record of all residential lots within the otherwise applicable distance requirements of this section which evidences a clear intent for the residential lots to be excluded from the protection of this section.

(e) A tower which is properly permitted under this article or which was in existence on the date of final passage of the ordinance creating this article, shall not be required to be removed or relocated in order to meet the minimum distance requirements of this article due to subsequent platting of a residential lot nearer to the tower than the distance requirements of this section. However, any alteration to existing tower structures shall require compliance with the applicable provisions of this article.

(f) Property uses and distances referred to in this section shall be determined as of the date and time that the completed tower permit application is filed.
(Ord. No. 97-57, 3-25-97; Ord. No. 98-68, § 2(9-4), 4-14-98)

Sec. 9-205. Tower security fence.

(a) The base of a tower must be completely enclosed by a fence, wall, or barrier which limits climbing access to such tower and any supporting systems, lines, wires, buildings or other structures. Exemptions from compliance with this section are provided in subsection (d) below.

(b) The fence, wall or barrier required by subsection (a) shall not be less than eight (8) feet in height with no openings, holes, or gaps larger than four (4) inches measured in any direction.

(c) Gates and doors allowing direct access to the tower and enclosed by a fence, wall, or barrier, as required by this section, shall be equipped with a lock to keep and capable of keeping such doors or gates securely closed and locked at all times and shall only be built on the side opposite of any public right of way.

(d) The requirements of this section do not apply to:

(1) Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower; or

(2) Existing tower sites having security fences at least six (6) feet in height.
(Ord. No. 97-57, 3-25-97; Ord. No. 98-68, § 3(9-5), 4-14-98)

Sec. 9-206. Screening fence, residential areas.

(a) The base of a tower, including all mechanical equipment and accessory structures, must be screened from view of residential lots by a wooden, substantially

opaque screening fence designed and built to provide privacy with a minimum height of eight (8) feet. Exemptions from compliance with this section are provided in subsection (c) below.

(b) The screening fence may contain gates or doors allowing access to the tower and accessory structures for maintenance purposes; such gates or doors shall be kept completely closed except for maintenance purposes and shall be located a minimum of eighteen (18) feet from the public right-of-way.

(c) The requirements of this section do not apply to:

- (1) Any tower constructed or placed a distance of more than two (2) times the height of the tower structure from all residential lots; or
- (2) Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower.

(Ord. No. 97-57, 3-25-97)

Sec. 9-207. Landscaping.

(a) All applicable tower sites shall have landscaping maintained in a healthy, growing condition at all times and in compliance with all applicable ordinances, deed restrictions, and regulations.

(b) All towers not exempted in section 9-3 shall be required to file a landscape plan with the planning department prior to issuance of a permit to construct said tower.

(c) The landscape plan shall contain at a minimum a landscape area eight (8) feet in width surrounding and immediately adjacent to any fence material required around the base of the tower.

(d) Landscape area must be improved with plant material of a height not less than five (5) feet which will provide an opaque screen upon planting. Said landscape area is not required abutting the access gate portion of required fence.

(Ord. No. 97-57, 3-25-97; Ord. No. 98-68, § 4(9-7), 4-14-98)

Sec. 9-208. Application procedures for a tower permit.

(a) An application for a tower permit shall be submitted to the building official in the manner prescribed herein. The applicant shall, with the filing of the completed tower permit application, submit payment of the appropriate tower permit fees established by the building official and approved by city council that are calculated to reasonably cover the expenses of administering the provisions of this article.

(b) The application shall not be considered complete unless accompanied by such drawings, descriptive data, filing fees, ownership information, and other pertinent data as is required by the building official. Each application for a tower permit or for a waiver shall include envelopes addressed to the owners and a complete list of those

owners, as is indicated by the most recently approved tax rolls, of all property within a distance of three hundred (300) feet from the proposed tower site.

(c) In the event that any of the required documentation, data, reports, or drawings contain any false or erroneous information known to the applicant, then any permit issued pursuant to that false or erroneous information shall be void with the same force and effect as if it had never been issued.

(d) The building official shall issue a permit for construction, placement, or alteration of a tower only if it:

- (1) Conforms to all restrictions relating to the use of the property described in the application;
- (2) Complies with all local ordinances, rules, and regulations relating to commercial building permits; and
- (3) Meets the requirements of 14 CRF, Part 77, all other regulations of FAA and FCC, as well as any other regulatory authorities and within jurisdiction this article.

(e) No later than the thirtieth calendar day following the filing of the required application, the building official shall issue to the applicant a written notice of approval or disapproval of the tower permit. Any notice of disapproval of a tower permit application must include a written report explaining in detail the reasons for such disapproval. The issuance of a written notice to the applicant shall be complete upon the deposit of such properly addressed notice in the United States mail, first class postage paid. (Ord. No. 97-57, 3-25-97)

Sec. 9-209. Notice requirements for a tower permit.

(a) The notice requirements of this section apply only to applications for tower permits for the construction, placement or alteration of towers subject to the requirements of this article.

(b) The applicant for a tower permit must post and use reasonable efforts to maintain a sign on the subject tower site for a minimum of thirty (30) calendar days beginning no later than the sixth calendar day following the date of the filing of the required completed application with the building official. The sign shall be posted no less than fifteen (15) feet from the public right-of-way that is used as access to the tower site. The sign shall face and be legible from the public right-of-way. The sign shall contain at a minimum the following items of information:

- (1) That this is the proposed site of a tower;
- (2) The proposed maximum height above grade of the proposed tower;
- (3) The tower permit application number assigned to this project by the City of Pasadena; and

- (4) The telephone number of the City of Pasadena Permit Division where additional information concerning this project may be obtained. The applicant shall remove the sign from the subject tower site after (i) the permit is obtained or (ii) the appeals process is complete.

(c) Written notice of the filing of each application for a tower permit or an application for a waiver as is provided for herein, shall be given to the owners, as is indicated by the most recently approved tax rolls, of all property within a distance of three hundred (300) feet from the proposed tower site to assure that all owners of record within a distance of two hundred (200) feet receive notice. Notice shall also be given to any established civic organization for that area within a three-hundred-foot radius of the proposed tower site, provided that the organization is registered with the city. Notice to all owners of record and civic organizations registered with the city shall be deemed given if properly addressed and deposited in the United States mail, with first class postage paid. The required written notice shall be in a form prescribed by the building official and shall be mailed no later than the tenth calendar day following the filing of the required completed application.

(d) Written notice shall be published at least once in a local newspaper of general circulation by the building official not later than the seventh calendar day following the date of filing of the required completed application. Such notice shall be published in the section of such newspaper in which other legal notices are commonly published, and shall be headed with the following words (or their reasonable equivalent), on conspicuous type: "NOTICE OF PROPOSED TOWER CONSTRUCTION." The notice shall state the height and location of the proposed tower site, describe the intended use of the tower, and advise that additional information may be obtained by writing or calling the office of the building official.

(e) The "written notice" required in subsection (c) above shall include at a minimum the following:

- (1) The name, address, and telephone number of the person or entity that will own the proposed tower structure;
- (2) The name, address, and telephone number of the applicant if different from the owner of the proposed tower;
- (3) The approximate proposed location of the tower structure including the street address, or nearest street intersection, and the name of the subdivision or survey if there is no recorded subdivision;
- (4) The proposed use of the tower structure and site;
- (5) The proposed maximum height above grade of the proposed tower structure; and
- (6) That additional information may be obtained by writing or calling the office of the building official.

- (f) Appeal of the building official's decision on an application for a tower permit by either an applicant or property owner within two hundred (200) feet of the tower site shall be made in accordance with section 9-211.
(Ord. No. 97-57, 3-25-97)

Sec. 9-210. Application for waiver.

(a) An application for a tower permit shall not be approved for a tower that is not in conformance with the regulations prescribed in this article unless a written application for a waiver has been submitted to and approved by the planning director or the city.

(b) An applicant for a tower permit who receives written disapproval from the building official may elect to submit a written application for a waiver to the planning director. An application for a waiver from the requirements of this article may be filed simultaneously with the filing of the application for a tower permit.

(c) An application for a waiver must be submitted in such manner as prescribed by the planning director citing the specific provision of this article from which a waiver is desired, the extent of the waiver sought, and the specific facts or reasons why such a waiver is necessary along with all supporting information or documentation.

(d) The director or the planning commission of the city, upon an application for a waiver, shall waive the requirements of section 9-204(a) if:

- (1) One or more intervening buildings, structures, topological features or trees substantially obstruct the view of the tower from residential lots; or
- (2) The area which is located between the tower and the residences within the distance requirements set forth in section 9-204(a) is predominantly commercial, industrial or business development.

(e) A waiver may be allowed where the director, with reasonable justification, has found the following:

- (1) That a literal application of this article will result in undue and unnecessary hardship or the rights of property owners within the setback area covered by section 9-204(a) would not be significantly harmed by the construction of such tower;
- (2) The waiver, if granted, will not be contrary to the public interest;
- (3) The waiver, if granted, will not be detrimental to the public health, safety, or welfare;
- (4) The waiver, if granted, will not result in a violation of any other applicable ordinance, regulation or statute; and
- (5) The waiver, if granted, will not result in the violation of any applicable deed restriction.

(f) No later than the thirtieth calendar day following the filing of the required application for a waiver, the director shall issue to the applicant a written notice that the waiver has been granted or refused. Any notice of refusal of an application for a waiver must include a written report explaining in detail the reasons for such refusal. The issuance of a written notice to the applicant shall be complete upon deposit of such notice in the United States Mail, first class postage paid, addressed to the applicant at the address given on the application for the waiver.
(Ord. No. 97-57, 3-25-97)

Sec. 9-211. Appeal and hearing procedures.

(a) Persons who own property within two hundred (200) feet of a proposed tower site and who have reasonable grounds to believe that approval of an application for a tower permit, the granting of a waiver for the proposed construction will unreasonably impact safety for adjacent land uses or violate any applicable restriction, rule, regulation, or ordinance may request a hearing before the planning commission to protest and present evidence establishing their allegations. Such hearing request must state the specific grounds relied upon and be presented to the office of the planning director no later than 2:00 p.m. on the thirty-seventh calendar day following the date of filing of the required completed application. Copies of all supporting documents, instruments, or other materials that are to be presented to the commission shall accompany such hearing request and shall be available for inspection and photocopying.

(b) An applicant for a tower permit or a waiver has until 2:00 p.m. on the seventh calendar day following the issuance of a notice of disapproval or refusal by the building official to file a written notice of appeal to the planning commission. The notice of appeal and request for hearing must be filed in the manner prescribed.

(c) Notice of the time, place, and location of the public hearing at which the protest or appeal is to be presented must be given by the planning commission before the tenth day before the date of the hearing by:

- (1) Publication in a newspaper of general circulation in the city and county in which the land that is the subject of the waiver is located;
- (2) By written notice delivered to the applicant, such written notice shall be served by depositing the same, properly addressed and postage paid, in the United States Mail, first class postage; and
- (3) By written notice delivered to the owners, as is indicated by the most recently approved tax rolls, of all property located within a distance of three hundred (300) feet from the property upon which the waiver is requested. Such written notice shall be served by depositing the same, properly addressed and postage paid, in the United States Mail, first class postage.

(d) All properly filed appeals and protests concerning the approval or disapproval of an application for a tower permit or the granting or refusal of an

application for a waiver for a particular project shall be considered in a single public hearing by a majority vote action of the planning commission. The public hearing shall be scheduled by the director at the next available planning commission meeting, assuming that proper notice has been given.

(e) At the public hearing on the application for a waiver, a waiver shall only be allowed where the commission, following a full hearing, has found the following:

- (1) That a literal application of this article will result in undue and unnecessary hardship;
- (2) The waiver, if granted, will not be contrary to the public interest;
- (3) The waiver, if granted, will not be detrimental to the public health, safety, or welfare;
- (4) The waiver, if granted, will not result in a violation of any other applicable ordinance, regulation or statute; and
- (5) The waiver, if granted, will not result in the violation of any applicable deed restriction.

(f) No action may be taken by the planning commission unless approved by a majority vote of the members of the commission at which the application for a tower permit or a waiver is considered.

(g) If the planning commission rejects an application for a tower permit or a waiver, or otherwise refused to approve a tower permit or grant a waiver, the planning commission shall issue a written report explaining in detail the reasons for such rejection, disapproval, or refusal. Such written report shall be issued not later than sixty (60) calendar days from the date the application was filed.

(h) The decision of the planning commission concerning the issuance or denial of a tower permit or the granting or refusal of a waiver shall be the final administrative determination of the issue presented.

(Ord. No. 97-57, 3-25-97; Ord. No. 98-68, § 5(9-11), 4-14-98)

Sec. 9-212. Building permit requirement and plan review.

(a) A tower permit obtained pursuant to the provisions of this article shall become invalid after the passage of ninety (90) days from the date of final approval of the tower permit unless any required building permit for the construction or alteration of the tower has been obtained before the expiration of that ninety-day period.

(b) The construction, placement, or alteration of a tower is subject to any plan review, permitting requirement, or hearing process applicable to commercial construction in general which is required by ordinance or by the rules promulgated; provided that such regulation or rules are consistent with the provisions of this article.

(Ord. No. 97-57, 3-25-97)

Sec. 9-213. Maintenance and inspection.

(a) All buildings, structures, supporting structures, wires, fences, or ground areas used in connection with a tower shall be maintained in a safe condition and in good working order. All equipment or machinery required by the building code, the fire code, or any other applicable regulation or ordinance for a building or structure or supporting structure or device shall be maintained in good working order. The owner or operator of a tower shall be responsible for the maintenance of the tower, supporting structures, buildings, fences, and ground areas.

(b) By applying for a tower permit under this article, the applicant specifically grants permission to the city, its duly authorized agents, officials, and employees, to enter upon the property for which a permit or waiver is sought, after first providing reasonable notice, for the purpose of making all inspections required or authorized to be made under this article, the fire code, the building code, the city health code or any other applicable regulation, rule, or ordinance.

(c) Every five (5) years after its initial construction, the structural integrity of each antenna tower shall be certified in writing by a state licensed civil engineer.
(Ord. No. 97-57, 3-25-97)

Sec. 9-214. Deed restriction affidavit.

(a) Every applicant for a tower permit or a waiver shall furnish an affidavit setting forth that the applicant is familiar with the title to the real property to which the requested permit appertains and that the intended use will not violate any applicable deed restrictions. Such affidavit shall be accompanied with a certified copy of the instruments containing the deed restrictions, or the instrument of revocation or termination, or the declaratory judgment, or any other recorded document containing restrictions that affect the use of the property.

(b) A tower permit shall not be issued until the requested affidavit and supporting documentation has been produced. Any permit issued on the basis of erroneous documentation known to the applicant or an affidavit which contains false information known to the applicant is void with the same force and effect as if it had never been issued and without the necessity of any action by the city or any other person or agency. A tower permit shall not be issued for the construction or alteration of a tower if the use or the intended use will be in violation of the recorded deed restrictions.

(Ord. No. 97-57, 3-25-97)

Sec. 9-215. Permitted hours for construction and maintenance.

Construction, placement, removal, maintenance, alterations, or modifications to a tower or equipment storage facility for a tower shall not be performed except between the hours of 7:00 a.m. and 9:00 p.m. of any day, except in a bona fide emergency; provided however, that the owner, operator, or his agents may perform regular maintenance between the hours of 9:00 p.m. through 7:00 a.m. as long as it does not create an unreasonable noise.

(Ord. No. 97-57, 3-25-97)

Sec. 9-216. Penalty for violation.

(a) Failure of any person to comply with any provision of this article shall be punishable upon conviction by a fine of not less than one hundred dollars (\$100.00) or more than two thousand dollars (\$2,000.00). Each day such violation continues shall constitute a separate offense. All authority granted to the city attorney, building official, planning director, planning commission and their designees under this article shall be exercised uniformly on behalf of and against all citizens and property of the city.

(b) If the building official, or one of his designees, makes a determination that a violation exists, a notice to comply shall be served on the owner or operator of the tower structure. The notice to comply shall be served as provided in subsection (e) below.

(c) After the expiration of ten (10) days from the date on which the notice to comply is served, the building official or his designee shall inspect the tower structure and site described in the notice. If the violation no longer exists, then the building official shall make a record of his findings, close the matter and take no further action. If the violation has not been abated, corrected, or in the process of being corrected, then he shall cause to be issued to the owner or operator of a tower structure a citation informing the violator of the specific provision of this article that is being violated, describing the condition causing the violation, and requiring the violator to appear before a magistrate.

(d) Each notice to comply must contain the following information:

- (1) That the building official has made a determination that a violation exists;
- (2) The specific condition that constitutes a violation of this article;
- (3) The specific provision of this article that is being violated;
- (4) The street address or general description of the property upon which the tower structure that is in violation of this article is constructed; and
- (5) That the owner or operator receiving this notice must abate, cease, or correct the violation not later than the tenth day after the date on which this notice is served.

(e) The notice to comply shall be served on the owner or operator of a tower structure in the following manner:

- (1) In person or by registered or certified mail, return receipt requested; or
- (2) If the owner cannot be located or identified or otherwise refuses to accept service as provided in this subsection, by posting a copy on the property upon which the tower structure exists and by publishing the notice to comply in a newspaper of general circulation in the county, two (2) times within seven (7) consecutive days. In the event service is accomplished pursuant to this subparagraph, it shall be deemed that the notice to

comply was served on the second day such notice is published in a newspaper of general circulation for purposes of calculating the passage of the ten-day period provided by this section for compliance.

(Ord. No. 97-57, 3-25-97)

Sec. 9-217. City attorney authorized to file suit to abate violation.

The city attorney is hereby authorized to file suit on behalf of the city in any court of competent jurisdiction to enjoin or abate a violation of this article. This penalty shall be cumulative and in addition to any other civil or criminal penalty provisions.

(Ord. No. 97-57, 3-25-97)

Sec. 9-218. Transitional provision.

The provisions of this article shall apply only to towers constructed, placed, or altered after the effective date of this article, except for the fencing requirements of section 9-205 which shall be applicable to all towers subject to this article.

(Ord. No. 97-57, 3-25-97)