

ORDINANCE NO. 4-1999

ORDINANCE TO REGULATE THE OPERATION OF TELECOMMUNICATIONS PROVIDERS

WHEREAS, The passage of the Federal Telecommunications Act of 1996 ("the Act") has permitted and fostered the rapid growth of wireless telecommunication services and has given rise to the concomitant need for adequate telecommunications facilities, including towers and other structures.

Section 704(a) of the Act generally preserves the authority of local governments over decisions regarding the placement, construction and modification of such facilities, subject to the limitations specified in the Act and incorporated in this legislation.

The Village of Holland has examined the escalating facility needs of wireless telecommunications providers in the context of addressing, in comprehensive fashion, concerns regarding the placement, construction, and modification of telecommunications facilities generally.

In an effort to balance the needs of the telecommunications industry and the health, safety, and general welfare of the public and the orderly growth and development of the Village of Holland, this local government has closely examined the competing considerations relating to the placement, construction, and modification of telecommunications facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF HOLLAND, OHIO, THAT:

SECTION 1. Purpose and Intent; Subject to Laws. The purpose of this legislation is to preserve the ability of telecommunications providers to operate facilities as necessary within the jurisdiction of the Village of Holland, while at the same time:

- a. Minimizing the adverse visual impacts of telecommunications towers, attachments and related facilities;
- b. Protecting persons and property from injury and damage; and
- c. Preserving and protecting natural resources and formations;

It is not the intent of this legislation and, consistent with the provisions of the Act, nothing in this legislation shall be construed:

- a. To permit unreasonable discrimination among providers of functionally equivalent personal wireless services, as defined in the Act;
- b. To prohibit or have the effect of prohibiting the provision of such personal wireless services;

- c. To permit action on any request for the authorization to place, construct, or modify personal wireless services facilities other than within a reasonable period of time after the request is duly filed, taking into account the nature and scope of the request;
- d. to permit denial of an application to place, construct, or modify personal wireless services facilities other than in writing and supported with substantial evidence contained in a written record; or
- e. to permit basing regulatory decisions of this nature on the environmental effects of radio frequency emissions to the extent that personal wireless services facilities comply with the regulations of the Federal Communications Commission (the "FCC") concerning such emissions.

The provisions of this legislation are subject to all applicable federal and state laws, rules, regulations, and orders.

SECTION 2. Definitions. The following terms as used in this legislation shall have the following meanings unless otherwise herein provided or unless the context or use indicates another or different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

"Co-location" means the use of a telecommunications facility by more than one telecommunications provider.

"Telecommunications" means the exchange of information through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.

"Telecommunications antenna" means the exterior physical device designed to transmit and/or receive electromagnetic signals authorized by the FCC in furtherance of telecommunications. Antennae used by amateur radio operators are not telecommunications antennae for purposes of this legislation.

"Telecommunications attachment" means a structure designed primarily to support telecommunications antennae, which is not self-supporting, but rather is attached to a building or other structure (other than a residence) such as (but not limited to) a church steeple, clock or bell tower, smoke stack, government building, agricultural building, utility building, apartment building, or water tower.

"Telecommunications equipment shelter" means an unmanned building, structure or casing that is used to house telecommunications facilities such as reception, relay and transmission equipment.

"Telecommunications facility" means any structure, tower, antenna, pole, node, wire, cable, line, wave guide, device, equipment, or any other physical object, and all appurtenances thereto, used to connect electrical or electromagnetic signals used in telecommunications, except as such facilities have been preempted from regulation by applicable law. Amateur radio operators' equipment is not included within this definition.

“Telecommunications provider” means a person or entity engaged in the business of providing telecommunications services to consumers, or a governmental entity, such as a police, fire, or ambulance department, that employs telecommunications facilities in its telecommunications network.

“Telecommunications tower” means a free-standing structure designed primarily to support telecommunications antennae.

SECTION 3. Structural and Appearance-related Standards

A. Applicable Regardless of Location

Telecommunications facilities must meet the following standards, regardless of location:

1. Aesthetics – Telecommunications facilities must be as aesthetically compatible with their environs as technically feasible and practicable under the circumstances.
2. Landscaping – Existing vegetation must be preserved as much as practicable under the circumstances. Any security fencing or barrier related to telecommunications facilities shall be surrounded by a continuous row of hardy, evergreen hedges or trees not less than 10 feet in depth, sufficient in height to screen adequately such fencing or barrier, and located within 10 feet of the fencing or barrier. Such landscaping shall be continuously maintained and promptly restored, if necessary.
3. Lighting – Lights, beacons or strobes attached to or illuminating telecommunications facilities shall be permitted only to the extent necessary to ensure safety or to comply with applicable law or regulation, and shall be designed to minimize direct light or glare onto surrounding properties.
4. Signage – Signage on or on the site of telecommunications facilities shall be permitted only as may be required by applicable law or regulations or as specifically required to approved by the Village Zoning Administrator; provided that “No Trespassing” signs with a telephone number of whom to contact in the event of an emergency shall be required.
5. Upkeep and Storage – The telecommunications provider is responsible for the weed and trash removal related to, and general upkeep of, its telecommunications facilities and their sites, and for ensuring that the surfaces of such facilities are maintained in good condition, free from flaking or peeling paint and rust. Outdoor storage of equipment, supplies and vehicles related to telecommunications facilities is prohibited, except to supply emergency power to such facilities during a power outage.
6. Lot – subject to the requirements for setbacks set forth herein, where telecommunications facilities are to be the sole use on a lot, the minimum lot size shall be two acres. Where telecommunications facilities are to be placed on a lot with an existing use (that is a permitted use in the district or a lawful nonconforming use), the minimum lot area shall be two acres; (that which is necessary to

accommodate the telecommunications facilities, any guy wires, any security fencing, any buffer plantings, and the like, in conjunction with such existing use). In no case shall a telecommunications facility be located in front of the principal building on a lot.

7. Automation – Where telecommunications facilities are to be placed on a lot with an existing use, such facilities must be fully automated and operationally unattended, with visits only for construction, emergencies, and periodic and necessary maintenance.
8. Service Equipment – All equipment and devices (including but not limited to cables, wires, pipes and conduits) that service telecommunications facilities shall be located underground or within such telecommunications facilities, if technically feasible and unless otherwise required by the Ohio Basic Building Code, the National Electric Code, and/or other applicable law.

Telecommunications towers and telecommunications attachments must meet the following standards, regardless of location:

1. Co-location – Telecommunications towers and telecommunications attachments shall be designed to be buildable up to the maximum height permitted by this legislation, and shall be constructed in such a way to permit at least 3 other telecommunications providers to co-locate its telecommunications facilities thereon when and if built to the maximum height permitted by this legislation.
2. Setbacks – Unless otherwise specified in this legislation, the setback requirements for all telecommunications towers and telecommunications attachments shall be the greater of (i) 1.5 feet for every foot of allowable height of such telecommunications tower or telecommunications attachment when attached; or (ii) the setback requirements for the applicable land use district. Any related fencing, screening, or other barriers shall be located behind the applicable setback lines. Notwithstanding the first sentence of this paragraph and unless otherwise specified in this legislation or permitted by the Village of Holland Council, telecommunications towers and telecommunications attachments shall be located not less than:

- (i) 225 feet from the nearest public right-of-way; and
- (ii) 500 feet from the lot line of any school.

Telecommunications towers must meet the following standards, regardless of location:

1. Height – the height of a telecommunications tower (including antenna) and approved lightning rods, if any) may not exceed 150 feet above the average grade plane of the telecommunications tower's base.
2. Color – the color of telecommunications towers shall be non-contrasting gray or that color which best camouflages them as against their surroundings, unless another color is required by applicable law or regulation.

Telecommunications equipment shelters must meet the following standards, regardless of location:

1. Size – the maximum size of a telecommunications equipment shelter shall be 500 square feet for one shelter on a given plot and 750 total square feet if there is more than one such shelter on a given plot.
 2. Height – the maximum height of a telecommunications equipment shelter shall be the maximum building height for the applicable land use district.
 3. Setbacks – the setback requirements for all telecommunications equipment shelters shall be the setback requirements for the applicable land use district. Any related fencing, screening, or other barriers should be located behind the applicable setback lines.
 4. Access – where telecommunications facilities are to be placed on a lot with an existing use, the service access to any telecommunications equipment shelter shall be provided by way of the circulation driveways associated with the existing use to the extent practicable.
 5. Use – telecommunications equipment shelters shall not be used for offices or long-term vehicle storage.
 6. Co-location – if telecommunications equipment shelters are initially constructed to accommodate only one use, space shall be reserved on-site to accommodate at least (1, 2, 3) other telecommunications equipment shelters in the event of co-location.
- B. Additional Standards Applicable to Non-Residential Districts

In addition to all standards that apply independent of location, the following standards also apply to telecommunications facilities located in non-residential districts:

1. Setbacks – notwithstanding any provision of this legislation to the contrary, the minimum distance from any telecommunications tower or telecommunications attachment to any residential use/district lot line shall be 1,000 feet.
2. Lot – notwithstanding any provision of this legislation to the contrary, if telecommunications towers are to be located in an agricultural area or a vacant lot, the minimum lot size shall be 2 acres.

C. Additional Standards Applicable to Residential Districts

In addition to all standards that apply independent of location, the following standards also apply to telecommunications facilities located in residential districts:

1. Automation – where telecommunications facilities are to be placed in a residential district, they must be fully automated and unattended on a daily basis, with visits only for construction, emergencies, and periodic and necessary maintenance.

2. Non-residential Use Property – where telecommunications towers or telecommunications attachments are to be placed or construed on property with a non-residential use within a residential and use district (including, but not limited to, government buildings, agricultural building, churches, utility buildings, hospitals, and schools), such telecommunications towers or telecommunications attachments shall be set back from all neighboring residential use/district lot lines by at least 1000 feet.

SECTION 4. Safety Related Standards. Telecommunications facilities must meet the following standards, regardless of location:

1. Compliance with Laws and Regulations – all telecommunications facilities must comply with all applicable laws and regulations, including but not limited to the Ohio Basic Building Code and this applicable regulations promulgated by the Federal Aviation Administration and the FCC (including radio frequency (electromagnetic) emissions standards) and by the Ohio Department of Transportation, and their respective successors.
2. Sound Construction – all telecommunications towers and telecommunications attachments must be soundly constructed and, including any guy wires, must be securely anchored to a foundation appropriate for the applicable soil conditions, and must be able to withstand sustained winds of at least 100 miles per hour and ice loads in accordance with the American National Standards Institute/Electronic Industry Association, Section 222-F (Annex H: Commentary on Ice Design Criteria for Communications Structures, as the same may be amended from time to time.
3. Security Fencing – security fencing 8 feet in height shall surround the telecommunications facilities (including any guy wires), or each of them, as required by applicable law or as may be determined by (the appropriate unit of the Village of Holland. (In no case shall barbed or razor wire be used on security fencing in residential districts.)
4. Anti-climbing Devices – telecommunications towers and telecommunications attachments shall be fitted with anti-climbing devices.
5. Maintenance – all telecommunications facilities must be regularly maintained as appropriate to ensure that safety is not compromised.
6. Non-interference – no telecommunications facilities may interfere with any public safety, police, fire, ambulance, or other governmental telecommunications.

SECTION 5. Nature Preservation. Telecommunications facilities must meet the following standards, regardless of location:

1. Natural Resource Protection – the placement, construction, or modification of telecommunications facilities shall comply with all natural resource protection laws and regulations, including those for floodplain, wetlands and steep slopes.

SECTION 6. Siting. Within areas that are technically feasible for telecommunications facilities, telecommunications facilities shall be situated in accordance with the following prioritization of location with (1) being the most favored location:

Permitted use:

1. Co-location

Conditional use:

2. Governmental district
3. Industrial district
4. Commercial, business, or office district
5. Agricultural district
6. Residential district (if placed or constructed on institutional-use property, such as that of a church, library, governmental, hospital, utility or school)

Prohibited Use:

1. Residential district (other than as described above)
2. Historical district
3. Recreation district
4. Conservation district

In addition to all other applicable application requirements of this legislation, applications to place, construct, or modify telecommunications facilities in a particular location must be accompanied by evidence demonstrating that locating such telecommunications facilities in more preferable locations (as depicted in the above priority list) is not technically feasible or practicable under the circumstances.

If telecommunications facilities are to be construed or placed on or in historic buildings or districts, the approval of the governmental entity charged with oversight of such buildings or districts (such as an Architectural Board of Review or an Architectural and Historic Board of Review) is required.

SECTION 7. Applications. Any person or entity desiring to place, construct or modify telecommunications facilities in the jurisdiction of the Village of Holland shall be required to obtain (a) permit(s) from the Zoning Administrator upon approval of the Plan Commission. Applications of those seeking to place, construct or modify telecommunications facilities on land owned by a public entity other than the Village of Holland shall, to the fullest extent permitted by law, be considered under and be subject to this legislation.

In addition to any application requirement detailed elsewhere in this legislation, applications to place, construct, or modify telecommunications facilities, regardless of the proposed location thereof, must include:

1. Technical Report – Technical demonstration that the telecommunications facilities are necessary, and certification that other sites in this jurisdiction and in surrounding communities are not preferred sites and that the proposed site is the best site under and according to reasonable engineering standards. This report shall also include:

- (i) the location of all of the applicants' existing and other planned telecommunications facilities in this jurisdiction;
 - (ii) the location of all other potential sites for the proposed telecommunications facilities that are technically feasible;
 - (iii) the location of all other telecommunications facilities where co-location is technically feasible;
 - (iv) the suitability of the proposed site for co-location; and
 - (v) any interference restrictions or considerations applicable to the proposed telecommunications facilities.
2. Basic proposal – the width, depth, height, color, type, specifications, capacity, functionality, and co-location potential of all proposed telecommunications facilities, certified by an Ohio licensed professional engineer.
3. Compliance with Standards – reasonably satisfactory evidence of compliance with all applicable structural, appearance, safety and nature preservation standards set forth in this legislation and in applicable law (as certified by an Ohio licensed professional engineer), including, but not limited to:
- (i) the certification of an Ohio licensed professional engineer as to compliance with applicable nationally accepted structural standards as published by the American National Standards Institute/Electronic Industry Association, Section 222-F(“ANSI/ELS-222 F”), as the same may be amended from time to time; and
 - (ii) a soil report which comports with the standards of ANSI/ELA 222-F (Annex I: Geotechnical Investigations for Towers), as the same may be amended from time to time, which report shall support the foundation and anchor specifications for the telecommunications facilities (including any guy wires).
4. Co-location – in the event that a telecommunications tower or telecommunications attachment is proposed to be constructed, evidence that the applicant has attempted in good faith to co-locate such a telecommunications tower or telecommunications attachment at all technically feasible locations on reasonable terms. Those telecommunications providers contacted by applicant for such purposes must be given at least 30 days to respond to such contact.

The applicant shall agree to permit co-location on a proposed telecommunications tower or telecommunications attachment (together with associated access and parking), to the extent technically feasible (but in no event fewer than 3 additional antenna), on reasonable terms. The applicant shall agree that all disputes with future telecommunications providers concerning co-location and the terms and conditions

of co-location shall be submitted to commercial arbitration under a system chosen by the parties in question, but if said parties are unable to agree upon such a system, then under the auspices of the Commercial Arbitration Provisions of the American Arbitration Association.

5. Use of Existing Structures – In the event that a telecommunications tower is proposed to be constructed, evidence that a technically feasible location is not reasonably available to construct an alternative telecommunications attachment on an existing structure.
6. Site Plan – A site plan detailing, within 300 feet of all proposed telecommunications facilities:
 - (i) existing and proposed telecommunications facilities;
 - (ii) existing and proposed buildings and other man-made structures;
 - (iii) existing and proposed natural features, including trees and shrubs;
 - (iv) existing and proposed access easements and parking areas; and
 - (v) existing and proposed utilities to and within the site.
7. Affected Properties – a listing of lots (with property owners' names and addresses, and uses of properties) within ¼ mile of the proposed site.
8. Maintenance Plan – a maintenance schedule (including, at a minimum, frequency of service, equipment needs, and traffic, safety and noise impacts) acceptable to the Village of Holland I light of any manufacturer's recommended maintenance schedule or otherwise.
9. Right of Access and to Place, Construct, or Modify – evidence of continuous legal access to the telecommunications facilities (regardless of other developments that may take place at the site) for the expected duration of the use of such telecommunications facilities, and evidence of a contractual right to place, construct, or modify such telecommunications facilities on the proposed site (through a siting agreement or grant of easement or otherwise).
10. Agreement to Remove: Bond – the agreement of the applicant to remove the proposed telecommunications facilities (and any associated site improvements such as access drives) within 90 days of discontinued use of or failure to use them, and to return thereafter the entire site thereof to its prior state, at the applicant's cost. Upon such discontinued use or failure to use, and if such telecommunications facilities are not removed as aforesaid, they shall be considered abandoned and the permit(s) to use them shall be terminated. At any time thereafter, the Village of Holland, or its authorized designee, may give written notice to the applicant that it intends to remove such telecommunications facilities (and related site improvements), at the applicant's cost, no sooner than 90 days after receipt by the applicant of said notice.

Within that 90 day period, applicant must be given an opportunity to either reactive or activate such telecommunications facilities, remove them (and related site improvements) and return the site thereof to its prior state, or show good cause why such telecommunications facilities, (and related site improvements) should not be removed. In the absence of such circumstances occurring within said 90 day period, the Village of Holland may order that such telecommunications facilities (and related site improvements) be removed and the site be returned to its prior state, at the applicant's cost.

To cover the Village of Holland's costs of such removal upon the occurrence of such events, the applicant shall post a bond or submit to escrow a cash deposit (or otherwise as approved by Village Council) in a reasonably sufficient amount to be determined by Village Council prior to issuance of any permit. Village Council may require periodic evidence of the continuing force and effect of such a body. Such a bond shall remain in full force and effect, or the deposit shall remain in escrow, as the case may be, until such telecommunications facilities are removed in accordance with this legislation.

11. Agreement to Indemnify – the agreement of the applicant to indemnify and hold harmless the Village of Holland, its officers, and employees from any claims, liabilities, costs and expenses incurred on account of or resulting from the construction, operation, maintenance, or removal of the proposed telecommunications facilities.
12. Insurance – proof of insurance of the following types and in the following amounts, insuring both the Village of Holland (and its elected and appointed officers, officials, agents, and employees) and the applicant pursuant to this legislation:
 - (i) comprehensive general liability insurance with limits not less than:
 - (a) \$2,000,000.00 for bodily injury or death to each person;
 - (b) \$500,000.00 for property damage resulting from any one accident;and
 - (ii) automobile liability for owned, non-owned, and hired vehicles with a limit of \$1,000,000.00 for each person and \$2,000,000.00 for each accident;
 - (iii) worker's compensation insurance within statutory limits;
 - (iv) employer's liability insurance with limits of not less than \$1,000,000.00; and
 - (v) comprehensive from premises-operations, explosions, and collapse hazard, underground hazard, and products completed hazard with limits of not less than \$1,000,000.00.

Such insurance shall be maintained until the proposed telecommunications facilities are removed in accordance with this legislation. Village Council may require the annual filing of a certificate of insurance evidencing the insurance amounts required

herein, and evidencing that the Village of Holland shall be notified by the insurer at least 30 days before any expiration or cancellation of required coverage's.

13. Application Fee and Deposit – To reimburse the Village of Holland for reasonable costs related to the processing of applications under this legislation, the applicant shall submit with its application a non-refundable permit fee and a deposit in amounts comporting with the schedule posed and periodically updated by the Village Council. Reasonable fees and costs of engineers and/or other consultants used by the Village of Holland to verify initial compliance with this legislation shall be deducted from the deposit, and the balance returned to the applicant upon completion of the permitting process.

Application requirements may be waived or modified by the Plan Commission of the Village of Holland on if (i) required by applicable law, (ii) deemed to be in the best interests of the Village of Holland on the basis of unique circumstances, or (iii) deemed to be inapplicable on the basis of unique circumstances.

Decisions of the Village of Holland on the application shall not be based on the environmental effects of radio frequency emission to the extent that any proposed personal wireless service facilities (as defined in the Act) comply with the FCC regulations.

Applications submitted to the Village of Holland shall be acted upon within a reasonable period of time after the application is duly filed, taking into account the nature and scope of the application.

Denials of applications shall be in writing and supported by evidence contained in a written record.

SECTION 8. Post-Approval Placement, Modification or Construction. A successful applicant shall commence placement, construction or modification, as the case may be, of telecommunications facilities within 180 days of permit issuance.

SECTION 9. Annual Review and Inspection. To ensure continuing compliance with this legislation, any permits issued to place, construct, or modify telecommunications facilities pursuant to this legislation are subject to annual review, and such telecommunications facilities are subject to annual inspection, by the appropriate entity of the Village of Holland, at the successful applicant's cost.

SECTION 10. Transfers. Applicants shall covenant that they will not assign, transfer, convey, sublet, sell, mortgage, pledge, or encumber the telecommunications facilities that are subject to this legislation, or allow the use of such telecommunications facilities by any other person or entity, without in each instance having first notified and obtained the approval of the Village of Holland. Any person or entity to which such telecommunications facilities are assigned, transferred, conveyed, sublet, sold, mortgaged, pledged, or encumbered, or to which use of such telecommunications facilities has been allowed, shall be fully subject to the conditions of any related permit and to the provisions of this legislation.

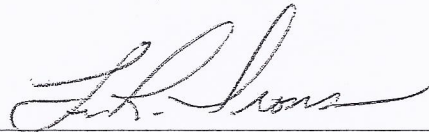
SECTION 11. Applicability. Upon adoption, the provisions of this legislation shall supersede any provisions of prior legislation directly in conflict therewith; otherwise, prior zoning and/or building code provisions shall remain in full force and effect.

SECTION 12. SEVERABILITY. If any portion of this legislation, or its application to any person or entity, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

SECTION 13. It is hereby found and determined that all formal actions of the council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including section 121.22 of the Revised Code of Ohio.

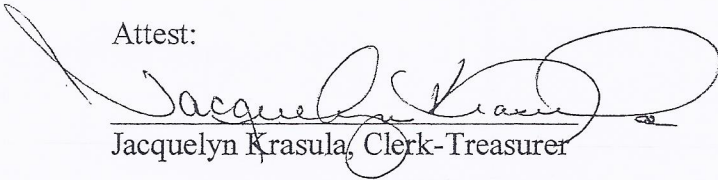
Vote on passage: 6 Ayes 0 Nays 0 Abstain

Passed this 16TH day of March, 1999



Lee Irons, President of Council

Attest:



Jacquelyn Krasula, Clerk-Treasurer

Approved:



Michael Yunker, Mayor