

APPROVED

***MINUTES
CITY COMMISSION MEETING
TUESDAY, DECEMBER 7, 2004
7:00 P.M.***

The Regular Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Brad Everett and Commissioners Ed Klimek, Bruce Snead, Mark Hatesohl, and Mark Taussig were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Diane Stoddard, Assistant to the City Manager Jason Hilgers, City Attorney Bill Frost, City Clerk Gary S. Fees, Youth in Government Representative Brianna Olds, 11 staff, and approximately 35 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Klimek led the Commission in the Pledge of Allegiance.

PROCLAMATION

Mayor Pro Tem Klimek proclaimed December 31, 2004, *Little Apple New Year's Eve Celebration Day*. Jeff Levin, Co-founder, was present to receive the proclamation.

RECOGNITION

Mayor Pro Tem Klimek and City Manager Ron Fehr recognized Chuck Williams, Director of Public Works, for his dedication and outstanding service to the City of Manhattan and wished him well in his retirement and in his new position with the City of Gladstone, Missouri. Mr. Fehr announced that a formal retirement event for Mr. Williams would be held starting at 3:30 p.m., December 17, 2004, in the City Commission Room, City Hall.

PUBLIC COMMENTS

Mayor Pro Tem Klimek opened the public comments.

Hearing no comments, Mayor Pro Tem Klimek closed the public comments.

COMMISSIONER COMMENTS

Mayor Pro Tem Klimek recognized Brianna Olds, Youth in Government representative with the City Commission, and the other Youth in Government representatives, including: David Wilcox, Felix Wang, and Brandon Malone.

Brianna Olds, Youth in Government representative, informed the Commission that she was pleased to be part of the Youth in Government Program and encouraged all youth to be involved and participate.

Mayor Pro Tem Klimek recessed the meeting until Commissioner Hatesohl arrived in order for a quorum to be present.

Commissioner Hatesohl arrived at 7:25 p.m., and the meeting resumed.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, November 16, 2004.

CLAIMS REGISTER NO. 2518

The Commission approved Claims Register No. 2518 authorizing and approving the payment of claims from November 10, 2004, to November 30, 2004, in the amount of \$2,174,002.21.

LICENSES – RENEWALS

The Commission approved the renewal applications for Cereal Malt Beverage, Tree Maintenance License renewal, Merchant Guard Agency, and Fireworks Display application for calendar year 2005.

ORDINANCE NO. 6445 – NO PARKING – MCCAIN LANE

The Commission approved Ordinance No. 6445 establishing a “No Parking Anytime” zone on north side of McCain Lane for 210 feet east of the centerline of North Manhattan Avenue.

ORDINANCE NO. 6446 – 2005 SALARY RANGES

The Commission approved Ordinance No. 6446 establishing the 2005 salary ranges for City employees.

CONSENT AGENDA (CONTINUED)

* **ORDINANCE NO. 6447 – AMEND ZONING REGULATIONS – TELECOM STRUCTURES**

Eric Cattell, Assistant Director for Planning, answered questions from the Commission.

The Commission approved Ordinance No. 6447 amending the Manhattan Zoning Regulations as proposed, to address the regulation of Telecom Structures, based on the findings in the Staff Memorandum. *(See Attachment No. 1)*

PUBLIC HEARING – VACATE DRAINAGE EASEMENT – 220 KOPP DRIVE

Mayor Pro Tem Klimek opened the public hearing.

Hearing no comments, Mayor Pro Tem Klimek closed the public comments.

FIRST READING – VACATE DRAINAGE EASEMENT – 220 KOPP DRIVE

The Commission approved first reading of an ordinance vacating a portion of the drainage easement as described within the attached ordinance on Lot 5, Bear Creek Addition (a.k.a. 220 Kopp Drive) an addition to the City of Manhattan, Riley County, Kansas.

* **RESOLUTION NO. 120704-A – AMEND COMPOSITION – SPECIAL ALCOHOL FUND ADVISORY COMMITTEE**

Commissioner Taussig requested the item be moved to the end of the general agenda.

Gary Fees, City Clerk, provided clarification on the item.

AWARD CONTRACT – HOUSING REHABILITATION PROJECTS

The Commission accepted the bids for the Housing Rehabilitation Projects; awarded the bid to the lowest responsible bidders for the base price; authorized City Administration to approve any necessary change orders; and authorized the Mayor and City Clerk to enter into an agreement with the contractor and property owners of 2310 Tuttle Circle, 510 Colorado Street, and 219 Summit Avenue for expenditure of Housing Rehabilitation Funds.

CONSENT AGENDA (CONTINUED)

- * **AWARD CONTRACT – 2005 – 2007 REFUSE COLLECTION CONTRACT**
Jeff Hancock, City Engineer, and Chuck Williams, Director of Public Works, provided clarification on the item and answered questions from the Commission.

The Commission awarded the 2005 - 2007 Refuse Collection Contract to Waste Management, of Manhattan, Kansas, for an annual collection fee of \$30,339.60.

AWARD CONTRACT – LINCOLN DRIVE WATER MAIN REPLACEMENT (WA0410)

The Commission accepted the Engineer's Estimate in the amount of \$174,090.00 and awarded a construction contract to the low bidder, Larson Construction, Inc., of Manhattan, Kansas, in the amount of \$168,880.40.

AGREEMENT – WASTEWATER TREATMENT PLANT INFLUENT PUMPS REPLACEMENT PROJECT

The Commission authorized the Mayor and City Clerk to execute an agreement in the amount of \$57,017.00 with Mid-America Pump, of Kansas City, Kansas, for the Wastewater Treatment Plant Influent Pumps Replacement Project.

TASK ORDER NO. 3 - ENVIRONMENTAL ASSESSMENT/UPDATE AIRPORT LAYOUT PLAN

The Commission authorized the Mayor and City Clerk to execute Task Order No. 3 with HNTB Corporation, Inc., of Overland Park, Kansas, contingent upon accepting an expected grant in the amount of \$322,596.00 from the Federal Aviation Administration.

AGREEMENT – WORKERS COMPENSATION

The Commission approved and authorized the Mayor to execute an agreement with Thomas McGee L.C., of Kansas City, Missouri, from January 1, 2005, through December 31, 2006, for Workers' Compensation services, and an agreement with Safety National Casualty Corporation, Inc., of St. Louis, Missouri, for Excess Insurance coverage from January 1, 2005, through December 31, 2006.

After discussion, Commissioner Taussig moved to approve the consent agenda, with the exception of Item H: RESOLUTION NO. 120704-A – AMEND COMPOSITION – SPECIAL ALCOHOL FUND ADVISORY COMMITTEE, which was moved to the end of the general agenda. Commissioner Snead seconded the motion. On a roll call vote, motion carried 4-0.

GENERAL AGENDA

NISTAC BUILDING PROJECT: NISTAC AGREEMENTS AND ARCHITECTURAL SERVICES CONTRACT

Diane Stoddard, Assistant City Manager, introduced the item.

Dr. Ron Sampson, NISTAC, presented background information on the item and provided additional information on the agreements. He then answered questions from the Commission.

Diane Stoddard, Assistant City Manager, answered questions from the Commission.

Ron Fehr, City Manager, and Dr. Ron Sampson, NISTAC, provided additional information on the item and answered questions from the Commission.

Brent Bowman, Bowman, Bowman, Novick, Inc., answered questions from the Commission.

After discussion, Commissioner Snead moved to authorize the Mayor and City Clerk to execute the agreements with NISTAC, Kansas State University, and Bowman, Bowman, Novick, Inc., to facilitate the NISTAC project. Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 4.0.

DEVELOPMENT AGREEMENT - BROOKFIELD ADDITION, UNIT 4

Jeff Hancock, City Engineer, presented the item and answered questions from the Commission.

Mayor Brad Everett arrived at 8:25 p.m.

Roger Schultz, Developer, Schultz Construction, provided additional information on the item and answered questions from the Commission.

Ron Fehr, City Manager; Jeff Hancock, City Engineer; and Roger Schultz, Developer, provided additional information on the item and answered questions from the Commission.

After discussion, Commissioner Hatesohl moved to authorize City Administration to finalize and the Mayor and City Clerk to execute a finalized Development Agreement with SSF Development, LLC, of Manhattan, Kansas, for the construction of the public infrastructure associated with Brookfield Addition, Unit 4, and further move that it is hereby the City Commission's intent to issue bonds and/or temporary notes in order to finance the purchase of such public infrastructure, pursuant to said Development Agreement. Commissioner Snead seconded the motion. On a roll call vote, motion carried 5-0.

GENERAL AGENDA (CONTINUED)

The Commission took a brief recess at 8:40 p.m.

MANHATTAN-OGDEN SCHOOL DISTRICT REQUEST - CONSIDER SALES TAX BALLOT INITIATIVE

Ron Fehr, City Manager, introduced the item.

Dr. Robert Seymour, Associate Superintendent, U.S.D. 383, presented the item.

Ron Fehr, City Manager, provided additional information on the item and explained the timeframe for the sales tax ballot initiative.

Dr. Robert Seymour, Associate Superintendent, U.S.D. 383, provided clarification on the item and answered questions from the Commission.

Brianna Olds, Youth in Government representative, asked if the school district is not able to maintain quality education without these funds, since the number of students has declined.

Dr. Robert Seymour, Associate Superintendent, U.S.D. 383, answered questions and provided additional information on the item.

Mohammad Hosni, 3409 Stonehenge Drive, and Jeff Levin, 3704 Everett Road, asked the Commission to support the initiative presented and place the item on the April 2005 ballot.

Beth Tatarko, 509 Edgerton Avenue, informed the Commission that it takes strong partners to build a strong community, and said a decision to support our schools is needed.

Randy Martin, 904 Brierwood Drive, U.S.D. 383 School Board Member, spoke of the many facilities that are jointly shared with the City and asked the Commission for its help to put this item on the ballot.

Dave Colburn, 1906 Bluestem Terrace, U.S.D. 383 School Board Member, encouraged the Commission to support the motion as presented, giving the community an opportunity to vote for or against. He then answered questions from the Commission.

Kathy Dzewaltowski, 1715 Laramie Street, spoke in favor of the sales tax initiative and asked the Commission to put the item on the April ballot for the public to decide.

Ruth Douglass Miller requested the item be placed on the ballot to let the public decide.

GENERAL AGENDA (CONTINUED)

MANHATTAN-OGDEN SCHOOL DISTRICT REQUEST - CONSIDER SALES TAX BALLOT INITIATIVE (CONTINUED)

Mary DeLuccie, 430 Shelle Road, urged the Commission to put the sales tax question on the ballot in April and to have the entire community vote on the issue.

Gary Olds, 3308 Frontier Circle, spoke against the sales tax initiative of placing the question on the April ballot and requested those interested go the petition route.

Michael Herman, 446 Edgerton Avenue, spoke in support of the quarter cent sales tax on the ballot.

After discussion, Commissioner Snead moved to accept the U.S.D. 383 Board of Education's request, agree to participate in a process to develop an interlocal agreement with intention of formally adopting an ordinance placing a school sales tax initiative on the April 2005 ballot, and appoint Commissioner Snead and another Commissioner to the working committee to formulate the interlocal agreement specifying how funds would be utilized and distributed if approved by the voters. Commissioner Hatesohl seconded the motion.

Ron Fehr, City Manager, and Bill Frost, City Attorney, provided clarification on the item and answered questions from the Commission.

Brianna Olds, Youth in Government representative, spoke against the motion and encouraged the petition process instead.

After further discussion, there was a friendly amendment to add Commissioner Klimek to the working committee. The friendly amendment was accepted.

The motion now reads: *"After additional discussion, Commissioner Snead moved to accept the U.S.D. 383 Board of Education's request, agreed to participate in a process to develop an interlocal agreement with intention of formally adopting an ordinance placing a school sales tax initiative on the April 2005 ballot, and appoint Commissioner Snead and Commissioner Klimek to the working committee to formulate the interlocal agreement specifying how funds would be utilized and distributed if approved by the voters."* Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 3-2, with Mayor Everett and Commissioner Taussig voting against the motion.

GENERAL AGENDA (CONTINUED)

DOUGLASS PARK POOL

Terry DeWeese, Director of Public Works, presented the item.

Bruce McMillan, Chair, Parks and Recreation Advisory Board, provided additional information on the item. He then answered questions from the Commission.

Terry DeWeese, Director of Parks and Recreation, answered questions from the Commission.

Don Slater, 830 Yuma Street, provided background information on the Douglass Park Pool and said that the pool itself is not historical, but the name is. He recommended closing the pool and if feasible, to do something like a children's water park.

After discussion, Commissioner Snead moved to accept the Parks and Recreation Advisory Board's recommendation to close the Douglass Park Pool and present an opportunity to study alternative recreational needs in the area for the future. Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 5-0.

AUTHORIZATION TO NEGOTIATE CONTRACTS - DENISON AVENUE, FOURTH STREET, K-18/WILDCAT CREEK ROAD INTERSECTION, AND THE EASTSIDE DRAINAGE STUDY

Jeff Hancock, City Engineer, presented the item.

Dave Manning, 401 Thurston Street, asked about Fourth Street construction plans and when the data would be collected and available.

Ron Fehr, City Manager, and Jeff Hancock, City Engineer, provided additional information.

Mark Bachamp, BG Consultants, informed the Commission that they chose not to bid on the Fourth Street project because HWS had the advantage of past working history with Dial Realty on the project. He then answered questions from the Commission.

Mike Goreman, HWS Consulting Group, informed the Commission that he was very willing to look at national rates and standards for roadway designs and fees, and that he would personally be involved in the negotiations to come to a fair agreement in scope and fee. He then answered questions from the Commission.

GENERAL AGENDA (CONTINUED)

AUTHORIZATION TO NEGOTIATE CONTRACTS - DENISON AVENUE,
FOURTH STREET, K-18/WILDCAT CREEK ROAD INTERSECTION, AND THE
EASTSIDE DRAINAGE STUDY (CONTINUED)

After discussion, Commissioner Snead moved to accept the recommendation of the Selection Committee and authorized City Administration to negotiate contracts with each of the engineering firms for projects that the Selection Committee found them to be most qualified to complete. Mayor Everett seconded the motion. On a roll call vote, motion carried 5-0.

ITEM REMOVED FROM CONSENT AGENDA

RESOLUTION NO. 120704-A – AMEND COMPOSITION – SPECIAL ALCOHOL
FUND ADVISORY COMMITTEE

Ron Fehr, City Manager, and Allie Lousch, Staff Liaison, Special Alcohol Fund Advisory Committee, provided clarification on the item and answered questions from the Commission.

Bernie Hayen, Director of Finance, answered questions from the Commission regarding fund revenue projections.

After discussion, Commissioner Hatesohl moved to approve Resolution No. 120704-A adopting the revised Special Alcohol Fund Advisory Committee policy. Commissioner Snead seconded the motion. On a roll call vote, motion carried 4-1, with Commissioner Taussig voting against the motion.

ADJOURNMENT

At 11:55 p.m., the Commission adjourned.



Gary S. Fees, CMC, City Clerk

Attachment No. 1



INTER-OFFICE MEMORANDUM

DATE: October 26, 2004

TO: Manhattan Urban Area Planning Board

FROM: Steve Zilkie, AICP, Senior Planner, and Katie Jackson, Assistant City Attorney

RE: Amendments of the Manhattan Zoning Regulations to Address Telecom Structures (Towers, Stealth Monopoles and Telecommunication Facilities)

BACKGROUND

Attached are the proposed amendments to the Manhattan Zoning Regulations regulating Telecom Structures, which is the infrastructure, associated with cellular phone and other personal wireless communications services. The proposed regulations identify and address three categories of telecom structures, consisting of towers, stealth monopoles, and telecommunication facilities. Towers, more commonly referred to as cell towers, are the taller structures with antenna arrays on the upper parts of the tower. These towers are typically 80-150 feet tall. Stealth towers are a proposed shorter monopole structure, 50-foot or less in height, which will have to incorporate design techniques that help to camouflage the structure, such as, but not limited to, a tree, light pole, or flag pole. Telecommunication Facilities are the antenna, cables, wires, sheds and other necessary support equipment, which aid in the transmission of the cellular communications.

The proposed amendments will add a new Article XII, Telecom Structures, as well as modifications to existing Article III General Provisions, Article VIII Nonconformities, Article IX Planned Unit Development Districts, Article XIV Administration, and Article XVI Construction and Definitions. The latter articles are proposed to be amended for cross-reference purposes, in order to properly administer new Article XII. The applicant is the City of Manhattan.

Existing Towers, Antennae and Regulations

There are three (3) existing cell towers in the City of Manhattan: a 150-foot monopole tower at the north end of the Manhattan Country Club Golf Course in a wooded area; a 150-foot monopole tower generally located several hundred feet west of N. Manhattan Avenue and the American Institute of Baking; and, a 150-foot monopole tower, under construction at 1125 Westport Drive, at the rear of the property. *(Note: There is a fourth 120-foot monopole tower located just north of the City's CICO Water Tank west of the Candlewood and Western Hills Additions on a small tract that is not annexed. This tower is included due its proximity to the City. The Riley County Board of Zoning Appeals approved the monopole in 1995.)* All of the towers allow for co-location of more than one cell phone provider, with telecommunication facilities (sheds, wires etc.) located at the base of the towers.

Antennas and support equipment have also been placed on the roof of the Ramada Inn. Antennas are on the Zoo, Miller Ranch and Bluemont Water Towers, with telecommunication facilities (sheds, wires etc.) located at the base of the towers.

In addition, there is a 45-foot cellular flagpole located at the Phi Delta Theta fraternity house at 1545 Denison Avenue, and a 65-foot cellular light pole at the Sigma Phi Epsilon fraternity house at 1015 N. Sunset Avenue, which was approved by the Board of Zoning Appeals (BZA) on October 13, 2004. Both the flag and light pole towers have screened telecommunication facilities, which provide power and other support to the tower.

The current Manhattan Zoning Regulations do not specifically address telecom structures. To date, towers and telecommunication facilities have been considered an "above ground public utility that is not owned or operated by a municipality", which is a Conditional Use in the majority of zoning districts. A Conditional Use requires notice to surrounding property owners, placement of a public hearing sign on the property as notification to the general public, a public hearing, findings of fact, and approval by the BZA, prior to construction. The BZA's decisions are final and may be appealed to District Court. All of the 150-foot cell towers, and two shorter monopoles, were considered and approved by the BZA.

Antenna and related telecommunication facilities on the Ramada Inn required an amendment of the ordinance, which controls the PUD. A public hearing was conducted to add the use to the PUD, which the Planning Board recommended approval of and was approved by the City Commission. Based on the approved ordinance, any new antenna on the Ramada Inn PUD, are subject to review as a Final Development Plan, and approval or denial by the Planning Board.

Telecommunications Act

The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, was amended by the Telecommunications Act of 1996. With the 1996 amendment, the federal government adopted the first comprehensive regulation of personal wireless telecommunication services, such as cell phone services. The Act imposes certain requirements on cities regarding the location of telecom structures and equipment.

The Act specifically states that no city may “prohibit or have the effect of prohibiting the ability of any entity” to provide telecommunications services. This rule under the Act has two applications to cities. First, the City cannot ban telecom structures and related equipment, because such structures and equipment are *essential* for a cellular company to provide its service.

Second, the City cannot impose regulations on telecom structures and related equipment that make it impossible for them to provide adequate service to customers. For example, if the City were to impose separation requirements on telecom structures, such as one mile between structures, the separation requirements could have “the effect of prohibiting” telecommunications services, in violation of the Act. Telecom structures are specifically located on sites to accommodate a service need – either to provide coverage or to increase capacity. Separation requirements could result in arbitrary location of telecom structures on sites that do not meet these service needs, which indirectly prohibit the ability of an entity to provide telecom services. Furthermore, given the land area of Manhattan, it is conceivable that once several telecom structures were in place, the separation requirements would make it so that there are no remaining sites for telecom structures. Again, separation requirements would be unlawfully, albeit indirectly, banning the provision of telecom services.

The City may not regulate telecom structures on the basis of the environmental effects of radio frequency emissions, so long as the facilities comply with the FCC regulations concerning such emissions.

However, the Act gives cities control over the aesthetics and site layout requirements of telecom structures. For example, it is permissible to set height limits for all telecom structures; to impose setback and lot size requirements; to require co-location; to require the location of antenna on existing telecom structures or antenna support structures; to regulate the type of tower; and to require stealth design. Any such regulation is permissible, so long as it does not have “the effect of prohibiting services” based on the land area and characteristics of the city. Furthermore, although a city cannot completely ban telecom structures, it can ban such structures from certain areas, but only if the ban does not have “the effect of prohibiting services.”

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The Act also imposes procedural requirements on cities, such as the requirement that if the City denies an application, the denial must be “in writing and supported by substantial evidence contained in a written record.” Furthermore, the City must act upon applications within a “reasonable period of time.” These procedural requirements, along with the permitted regulations discussed above, have been incorporated into the proposed ordinance.

Telecommunications

As described above, the Telecommunications Act protects personal wireless telecommunications services, which are defined in proposed Article XII as “Any personal wireless service as defined in the act, including FCC-licensed commercial wireless telecommunications services such as cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging and unlicensed wireless services and common carrier wireless exchange access services.”

These services are a technology-based industry, which are advertised in all forms of media. The demand for services is increasing on a yearly basis. For example, at the October 13, 2004, BZA meeting, the consultant representing the provider T-Mobile, indicated that average daily calls for the provider in Manhattan were 25,372 in 2002, 38,444 in 2003, 68,360 in 2004, and are projected to be 87,046 in September 2005.

Personal wireless service allows for anytime connections from any location. To be functional, telecom structures, the fixed infrastructure, are needed by providers to provide their customers with phone service. It is difficult to second-guess demand in a technology driven market and determine locations for telecom structures.

Because of Manhattan’s topography, wireless providers have typically located their infrastructure on hilltops to provide the necessary coverage of the community. In an effort to reduce the overall number of cellular towers being constructed in town, City Administration has over the past few years promoted co-location of antennas on existing City water towers. Most of the existing water towers now have antennas on them. However, due to the rapid increase in demand by residents and visitors who utilize wireless communication devices, it has become necessary to develop additional physical infrastructure within the community to address the need for increased capacity, particularly in the central portions of the community where large numbers of people congregate, such as in and around the K-State Campus and within commercial areas. To increase capacity on the finite number of available cellular frequencies requires the construction of additional antennae between the existing towers, so as to break the “cells” into smaller areas.

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The proposed zoning amendments are intended to provide alternatives and opportunities, which balance market demand and the mandate of the Telecommunications Act to allow wireless services, with legitimate zoning interests to protect the public health, safety, and general welfare.

Philosophy Behind Proposed Regulations

City Administration is concerned about the impact of additional large wireless telecommunication towers within the community. The proposed regulations have been designed to encourage providers to use less intrusive alternatives, to co-locate antennae and associated equipment on, or within, existing buildings, water towers or other structures including existing cellular towers, by making such co-location a permitted use in most commercial and industrial areas. The use of stealth design techniques is also promoted to either hide or camouflage telecommunication infrastructure, so that it is either invisible or less noticeable. If a tower is unavoidable, shorter stealth towers are encouraged as permitted uses in commercial and industrial areas, however all types of towers remain a Conditional Use in any residential district. Finally, the large towers remain a Conditional Use in all areas of the community. The regulations also promote public safety by requiring certification by the manufacturer that a tower is designed to collapse on itself and not fall over in the event of a failure.

Proposed Amendments To The Manhattan Zoning Regulations

Proposed Article XII will provide a comprehensive approach to regulate cellular towers, stealth monopoles, and telecommunication facilities. The following provisions are contained in the proposed article: Purpose and Objectives; Definitions; Applicability; Zoning Requirements; Pre-Application Conference; Administrative Permits, Conditional use permits, and PUD Amendments; Approval or denial; Pre-existing Structures; Lot Size Requirements; Bulk Regulations; Structural Requirements; Use Limitations; Signs; Stealth Design Principles for Telecom Structures; Exceptions; Modification and Replacement; Building Permits, Inspections and Certifications; Maintenance; and, Abandonment.

In addition, the amendments propose modifications to the Table of Contents and the following Articles: Article III, General Provisions; Article VIII, Nonconformities; Article IX, Planned Unit Development Districts; Article XIV, Administration; and, Article XVI, Construction and Definitions.

Overview of Proposed Article XII, Telecom Structures

Policy and Purposes. This section sets out the objectives of Article XII regarding placement, construction and modification of telecom structures to protect the public health, safety and welfare.

Definitions. defines the terms, words and phrases used in Article XII.

Applicability. Indicates that telecom structures and antenna support structures are subject to Article XII, except that the following are exempt from Article XII: amateur radio operators, residential antennas, utility poles, and broadcast systems and facilities.

Zoning Requirements. Towers will be a Conditional Use in all residential and non-residential districts, except PUD's. Telecom structures, which are proposed in PUD's are subject to the requirements of Article IX, Planned Unit Development Districts, and may require an amendment of the ordinance, which created the PUD. Telecommunication facilities are a permitted use on municipal facilities. Stealth monopoles are a permitted use in non-residential districts, except if the stealth monopole is located within 200-feet of a residential district, or within 500-feet of a designated historic property or district in which case a stealth monopole is a Conditional Use. Stealth monopoles will be a Conditional Use in all residential districts. In addition, an application for an administrative permit must be made for all telecom structures, and must be approved, by the City.

Towers. Towers may be self-supporting lattice, guyed, or monopole structures at a maximum height of 150-feet, not including a lightning rod, which may be up to 20-feet in height. Monopole towers are preferred over self-supporting lattice or guyed towers. Towers must be setback from property lines a distance equal to the height of the tower. Towers must be designed to collapse on themselves to minimize impact on surrounding properties.

Alternatives To Towers: Stealth Monopoles and Co-locating Antenna on Antenna Support Structures. Total height of a stealth monopoles shall not exceed 50-feet in height, measured from the ground. Antenna located on structures other than a monopole will have varying maximum heights, dependent upon the height of the structure (see Sec. 12-110(A)(4) (a-d).

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Pre-Application Conference and Administrative Permits, Conditional Use Permits and PUD Amendments. Prior to submitting any application for any permit, Exception, Variance, Conditional use, or PUD amendment, the applicant must have a pre-application conference with the City to review the applicant's plans and discuss procedures, regulations and submittal requirements.

An administrative permit is a review and approval process by the Zoning Administrator, supported by documentation provided by the applicant. No telecom structures may be constructed until an administrative permit and any other necessary Conditional Use Permit, PUD amendment, and building permit is approved. Administrative permits will require an extensive amount of site plan drawings, photographic simulations, written document statements, and affidavits from the applicant and their engineer, (see Sec. 12-106 for a complete listing and explanation.). In addition, applications for a Conditional Use Permit must provide additional information. PUD amendments must include the information required for a PUD plus that required for an Administrative Permit.

Structural Requirements. Towers and stealth monopoles must be designed to collapse on themselves and must allow for co-location of other providers. The number of providers that must be accommodated is dependent upon the height of the structure.

Use Limitations. The City, BZA and/or Planning Board and City Commission can require the use of stealth design principles depending upon the character of the proposed location and type of tower or telecommunication facility proposed. Additional use limitations address lighting, fencing screening, landscaping and access.

Stealth Design Principles for Telecom Structures. Telecom Structures that are of a stealth design are those which are designed to blend with the character and environment of the area in which they will be located. Design principles are proposed (see proposed Section 12-114 A-H) to minimize the impact of any stealth telecom structure in order to preserve the pre-existing character of the area. Flagpoles, clock towers, bell towers, steeples, or other appropriate structures may be utilized to ensure a stealth design.

Conditional Uses/Exceptions. As described above, towers, stealth towers and telecommunications equipment will be a Conditional Use in all residential districts, except residential PUD's. A Conditional Use will require additional information, which must be provided by the applicant in the form of technical evidence and affidavits (see proposed Section 12-106 (C)). The BZA will be required to consider additional standards (see proposed Section 12-107 (B)) along with the normal standards for a Conditional Use set out in Article XIV, Administration, PART 7, Conditional Uses.

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Exceptions related to Telecom Structures regarding lot size, bulk regulations, and use limitation, may be granted by the BZA, which shall consider the standards set out in Article XIV, PART 6, as well as proposed standards specific to Telecom Structures (see proposed Section 12-115 (2) (a-b)).

Pre-existing Structures, Modification and Replacement. These are Telecom Structures that existed prior to the effective date of proposed Article XII, either within or outside the City and are annexed at a later date. Pre-existing Structures will be regulated by proposed Section 12-116, Modifications and Replacements, which will allow these structures to be replaced if damaged or destroyed, provided the replacement is the same as the original in type, location, height, and character, and the replacement complies with the requirements of Article XII. Any “modification”, a defined term meaning “Any physical change to any element of a telecom structure or pre-existing structure that involves a Bulk Regulation, Section 12-110, or a Use Limitation, Section 12-112”, of a pre-existing structure will require the pre-existing structure to conform with Article XII. The term modification does not include the circumstance in which a pre-existing structure is modified to facilitate co-location or to increase the number of providers, provided that the height of the pre-existing structure is not increased. This will allow the providers network to be maintained, unless they choose to modify the pre-existing structure.

Additional provisions within proposed Article XII address signs, building permits, inspection and certifications, maintenance and abandonment.

Proposed Amendments To Other Articles of the Zoning Regulations (proposed text in bold)

Table of Contents. New Article XII, Telecom Structures, will be added to the Table of Contents.

Article III, General Provisions. Sections 3-102, 3-406 and 3-410 will be modified to indicate that the infrastructure associated with Telecom Structures are not exempt from general structural exemptions for utility equipment, and height, lot and bulk regulations. In addition, Section 3-401 (A), Number of Structures on a Zoning Lot, will be modified to read “Not more than one principal structure shall be located on a residential zoning lot, except as may be permitted by Article IX, of these regulations relating to Planned Unit Development Districts, **or by Article XII relating to Telecom Structures.**”

Article VIII, Nonconformities. A new paragraph (D) will be added to Section 8-101, Nonconformities: **(D) Notwithstanding sections (A) and (B) above, this Article shall not apply to Telecom Structures, as defined by Article XII. Nonconforming Telecom Structures shall comply with the provisions of Article XII, Section 12-116.**

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The effect of this amendment is that nonconforming telecom structures will be allowed to be modified and/or replaced as per Article XII.

Article IX, Planned Unit Development Districts. A new paragraph (11) will be added to Section 9-108. Amendments and Modifications. **(11) Construction of telecom structures, as defined by Article XII, except when the ordinance(s) that establishes and controls the PUD expressly permits telecom structures in its text, rather than by reference to another zoning district in these regulations.**

Article XIV, Administration. Add a new paragraph (H) to Section 14-604. Authorized Exceptions. The Board of Zoning Appeals is hereby authorized to grant exceptions from the following requirements of these regulations: **(H) Any of the following requirements in Article XII Telecom Structures: Section 12-109, Lot Size Requirements; Section 12-110 Bulk Regulations; Section 12-111 (C) pertaining to co-location; and Section 12-112 Use Limitations;** add a new paragraph (E) to Section 14-605, Standards for Exceptions. **(E) Any other standards for exceptions that are specifically identified in these regulations;** and add new paragraph (G) to Section 14-704, Standards for Conditional Use Permits. **(G) Any other standards for conditional uses that are specifically identified in these regulations.**

Article XVI, Construction and Definitions. A new definition is added to PART 2. DEFINITIONS Section 16-201, **PERSONAL WIRELESS TELECOMMUNICATIONS SERVICES: Any personal wireless service (as defined in the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., as amended, including the amendment known as the Telecommunications Act of 1996, and all future amendments), including FCC-licensed commercial wireless telecommunications services such as cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging and unlicensed wireless services and common carrier wireless exchange access services. (see Article XII).**

AMENDMENTS TO THE TEXT OF THE ZONING REGULATIONS

When a proposed amendment results in a change to the text of the Zoning Regulations, the report from the Planning Staff shall contain a statement as to the nature and effect of the proposed amendment, and determinations as to the following:

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WHETHER SUCH CHANGE IS CONSISTENT WITH THE INTENT AND PURPOSE OF THE ZONING REGULATIONS

The intent and purpose of the Manhattan Zoning Regulations is to protect and promote the public health, safety, morals and general welfare; regulate the use of land and buildings within zoning districts to assure compatibility; and to protect property values.

The proposed amendments are intended to regulate the location of telecom structures by providing a comprehensive zoning process. The proposed amendments offer and promote alternatives in terms of process and structure, to enable the telecommunications industry to provide personal wireless services in a reasonably efficient manner, while balancing the need to protect the public health, safety and welfare and the interests of the community. The proposed amendments provide for written findings for decisions by the City, which explain the reasons for approval or denial of a telecom structure. The proposed zoning amendments are consistent with the intent and purpose of the Manhattan Zoning Regulations.

AREAS WHICH ARE MOST LIKELY TO BE DIRECTLY AFFECTED BY SUCH CHANGE AND IN WHAT WAY THEY WILL BE AFFECTED

All areas of the City are affected by the proposed amendments. All telecom structures are subject to a pre-application conference and an administrative permit.

Towers will be a Conditional Use in all districts, except PUD's. Telecom structures, which are proposed in PUD's are subject to the requirements of Article IX, Planned Unit Development Districts and may require an amendment of the PUD, unless telecom structures are already specifically permitted in the PUD. Telecommunication facilities are a permitted use on municipal facilities, such as city water towers. Stealth monopoles are a permitted use in non-residential districts, except if the stealth monopole is located within 200-feet of a residential district, or within 500-feet of a designated historic property or district. Stealth monopoles will be a Conditional Use in all residential districts.

The effect of the regulations is to protect the interests of the community, while facilitating less intrusive infrastructure alternatives so that telecom providers can be able to serve their customers.

WHETHER THE PROPOSED AMENDMENT IS MADE NECESSARY BECAUSE OF CHANGED OR CHANGING CONDITIONS IN THE AREAS AND ZONING DISTRICTS AFFECTED, OR IN THE CITY PLANNING AREA, GENERALLY, AND IF SO, THE NATURE OF SUCH CHANGED OR CHANGING CONDITIONS

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The wireless cellular industry is a presence in almost all communities. The growing demand for personal wireless telecommunications service includes the need to accommodate additional infrastructure to support cellular phone and other wireless services and the need for increased capacity. As noted above, all zoning districts, residential and non-residential, as well as planned unit developments are affected. The changing conditions are a rapidly growing wireless industry of providers that serve a rapidly increasing number of consumers. The construction of towers and alternative telecommunication facilities, such as antennae on structures other than towers, or utilizing less intrusive stealth towers, requires a review process, which balances the needs of the industry to provide its service with the need to protect the public health, safety and welfare and the interests of the community.

WHETHER SUCH CHANGE IS CONSISTENT WITH THE INTENT AND PURPOSE OF THE POLICY AND GOALS AS OUTLINED IN THE ADOPTED COMPREHENSIVE PLAN OF THE CITY

The Zoning Regulations implement the Comprehensive Plan, which does not specifically address telecom structures; however, there are several policy statements in the Plan, which are generally applicable.

Under “Land Use and Growth Management” Goal 1 states, “Promote land use and development practices that consider current and future economic, social and environmental impacts . . .”

Under “Regional Coordination” one of the Guiding Principles states, “Coordinate land use goals, objectives and policies of the City of Manhattan and other governmental agencies within the region.”

Under “Housing and Neighborhoods” one of the Guiding Principles states, “Identify and foster initiatives to maintain or enhance the quality of life in existing neighborhoods throughout the community.”

Under “Community Design” Goal 1 states, “Guide the appearance, scale and location of urban development to enhance community character . . .”

The proposed amendments will provide a comprehensive process for the review, consideration and approval, or disapproval, of telecom structures, both proposed and pre-existing, in a consistent manner. Options in the form of antenna and stealth designed monopoles, as an alternative to large towers, are set out in the proposed amendments. The proposed regulations attempt to strike a balance between the need to protect the public

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health, safety and general welfare, and accommodate the wireless industry. In general, the proposed amendments are consistent with Goals of the Comprehensive Plan.

ALTERNATIVES

It appears the Manhattan Urban Area Planning Board has the following alternatives concerning the issue at hand. The Board may:

1. Recommend approval of the proposed amendments to the City Commission.
2. Recommend denial of the proposed amendments to the City Commission.
3. Modify the proposed amendments and forward the modifications, along with an explanation, to the City Commission.
4. Table the public hearing to a specific date, and provide further direction to City Administration.

RECOMMENDATION

City Administration recommends approval of the amendments to the Manhattan Zoning Regulations concerning cellular telecommunication towers and personal wireless telecommunication facilities, as proposed. The amendments involve modifications to the Table of Contents and the following Articles: Article III, General Provisions; Article VIII, Nonconformities; Article IX, Planned Unit Development Districts; Article XIV, Administration; and, Article XVI, Construction and Definitions. The amendments also include using Reserved Article XII to establish a new Article XII, Telecom Structures.

POSSIBLE MOTION

The Manhattan Urban Area Planning Board recommends approval of the proposed amendments to the Manhattan Zoning Regulations concerning Telecom. Structures, including modifications to the Table of Contents and Article III, General Provisions; Article VIII, Nonconformities; Article IX, Planned Unit Development Districts; Article XIV, Administration; and, Article XVI, Construction and Definitions; and establishing a new Article XII, Telecom Structures, based on the findings in the Staff Memorandum.

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