

CHAPTER 37
ORDINANCE NO. 2001-_____

**AN ORDINANCE AMENDING THE KANKAKEE MUNICIPAL CODE BY CREATING CHAPTER 37
ENTITLED "TELECOMMUNICATIONS TOWERS AND ANTENNAS"**

BE IT ORDAINED by the City Council of the City of Kankakee, an Illinois home-rule municipality situated in Kankakee County, Illinois, as follows:

WHEREAS, on February 8, 1996, Congress enacted the Telecommunications Act of 1996, P.L. No. 104-104, to deregulate the telecommunications industry, providing a more competitive environment for wireless telecommunications services in the United States; and

WHEREAS, an effect of increased competition in the market for wireless telecommunications services is an increased demand for antenna sites on towers and other alternative support structures or buildings necessary for providing wireless service via existing and new technologies; and

WHEREAS, the Telecommunications Act of 1996 preserves the authority of local governments to regulate the placement, construction, and modification of towers, alternative support structures, and telecommunications antennas and/or related equipment, as hereinafter defined, in order to protect the health, safety, and general welfare of the public; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KANKAKEE, ILLINOIS, THAT CHAPTER 37 OF THE KANKAKEE MUNICIPAL CODE ENTITLED "TELECOMMUNICATIONS TOWERS AND ANTENNAS," IS HEREBY CREATED TO READ AS FOLLOWS:

CHAPTER 37
TELECOMMUNICATIONS TOWERS AND ANTENNAS

Sections

- Sec. 37-01: Legislative Findings.**
- Sec. 37-02: Purpose.**
- Sec. 37-03: Definitions.**
- Sec. 37-04: Recognition of Established Industry Site Selection Criteria.**
- Sec. 37-05: Radio Frequency Emissions.**
- Sec. 37-06: General Requirements.**
- Sec. 37-07: Site Location Preferences.**
- Sec. 37-08: Exemptions.**
- Sec. 37-09: Permitted Uses.**
- Sec. 37-10: Conditional Use Permit Required.**
- Sec. 37-11: Variation from General Requirements.**
- Sec. 37-12: Certifications and Inspections.**
- Sec. 37-13: Maintenance.**
- Sec. 37-14: Abandonment.**

class=Section2>

Sec. 37-01: Legislative Findings. The Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over the regulation of the environmental effects of radio frequency (RF) emissions from telecommunications towers, antennas and/or related equipment; and the regulation of radio signal interference among users of the RF spectrum. The City of Kankakee's (herein after "City's") regulation of telecommunications towers, antennas and/or related equipment in the City will not have the effect of prohibiting any person from providing wireless telecommunications services in violation of the Act.

Sec. 37-02: Purpose. The purpose of these regulations are to regulate the placement, construction, and modification

of telecommunications towers, antennas and/or related equipment in order to protect the health, safety, and general welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City.

Specifically, the purposes of these regulations are:

- A. To regulate the location of new telecommunications towers, antennas and/or related equipment in the City;
- B. To protect residential areas and other land uses from potential adverse impact of siting of new telecommunications towers, antennas and/or related equipment;
- C. To minimize the adverse visual impact of new telecommunications towers, antennas and/or related equipment through careful design, siting, and landscaping;
- D. To promote and encourage the shared-use or “co-location” of existing towers and alternative support structures or buildings as a “primary” option rather than construction of additional new telecommunications towers;
- E. To promote and encourage utilization of technological designs that may eliminate or reduce the need for erection of new telecommunications towers, antennas and/or related equipment;
- F. To avoid potential damage to property caused by telecommunications towers, antennas and/or related equipment by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and,
- G. To ensure that new telecommunications towers, antennas and/or related equipment are compatible with surrounding land uses.

Sec. 37-03: Definitions. The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Antenna means any exterior apparatus designed for telephonic, radio, data, Internet, or television communications through the sending or receiving of electromagnetic waves, and including related equipment attached to a tower, structure or building, for the purposes of providing such service.

Alternative Support Structure means any structure or building, other than a tower, which can be used for the location of telecommunications antennas and/or related equipment.

Applicant means any service provider or person, partnership, or company, who files an application for any permit or approval necessary to install, maintain, modify or remove a telecommunications tower, antenna and/or related equipment.

Application means the process by which an applicant submits a request to construct, build, modify, or erect a telecommunications tower, antenna and/or related equipment upon a parcel of land within the City, and shall include all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the City concerning such a request.

Co-Location means the shared-use of a tower or alternative support structure or building by more than one (1) wireless telecommunications service provider.

Disguised Support Structure (or Tower) means any telecommunications support structure or building, tower, antenna and/or related equipment which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof or wall mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower.

Engineer means any engineer licensed by the State of Illinois.

FAA means the Federal Aviation Administration

FCC means the Federal Communications Commission.

Person is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Service Provider means any corporation, company, association, firm, partnership, limited liability corporation, other entity or individual or person which provides wired or wireless telecommunications services licensed by the FCC.

Telecommunications Antenna means any cables, wires, lines, wave guides, and any other related equipment or devices (including equipment shelters, enclosures or cabinets) that are associated with the transmission or reception of wireless telecommunications which a person or service provider seeks to locate or has installed upon or near a tower or alternative support structure or building.

Tower means any structure, including self-supporting lattice, guyed, or monopole structures, that is designed and constructed primarily for the purpose of supporting one (1) or more wireless telecommunications antennas and/or related equipment.

Tower Height means the vertical distance measured from the average grade of the base of the structure, including the main tower and base pad, at ground level to its highest point, excluding all attachments thereto that do not exceed the main tower height by more than ten (10') feet.

Tower Site (or "Compound") means a tract or parcel of land, including any leased portion thereof, upon which contains or is proposed to contain wireless telecommunications service towers, antennas and/or related equipment, including support structures or buildings, and accessory buildings or shelters, and may include other uses associated with and ancillary to telecommunications services.

Sec. 37-04: Recognition of Established Industry Site Selection Criteria. The City recognizes that in establishing new tower sites, the wireless telecommunications industry requires a location that is technologically compatible with the service providers established telecommunications system or network. Generally an area is identified, based upon engineering constraints and the desired area of service, and specific locations within the identified area are evaluated by the service providers using criteria that typically includes, but is not limited to: (1) the topography as it relates to line of sight transmissions for optimum efficiency, (2) the availability of physical access to the site, including access to electric power and land based telephone lines or micro-wave link capability, (3) the availability of leaseable lands, and landlords who want such towers, antennas and/or related equipment to be located on their properties, (4) the screening potential of existing vegetation, structures and topographic features, (5) compatibility with adjacent land uses, (6) the least number of sites to cover the desired area, (7) the greatest amount of coverage, consistent with physical requirements, (8) the availability of opportunities to mitigate possible visual impact, and (9) the viability of suitable existing towers and alternative support structures or buildings for telecommunication antennas and/or related equipment mounting or "co-location."

Sec. 37-05: Radio Frequency Emissions. The City, in recognizing that the Act gives the Federal Communications Commission (FCC) sole jurisdiction of the field of regulation of radio frequency (RF) emissions and does not allow the City to condition or deny, on the basis of RF impacts, the approval of any telecommunications antennas and/or related equipment (whether mounted on towers or alternative support structures or buildings) which meet FCC standards. Applicants may however be required, upon request of the City, to submit technical information on the proposed power density of their proposed telecommunications antenna and/or related equipment in order to demonstrate how it meets FCC standards.

Sec. 37-06: General Requirements. The following provisions shall govern the placement, construction, and modification of telecommunications towers, antennas and/or related equipment:

- A. Principal or Accessory Use. Telecommunications towers, antennas and/or related equipment may be considered a principal use in all zoning districts where permitted, or an accessory use to existing industrial, commercial, governmental, public utility or other non-residential uses, subject to compliance with these regulations.
- B. Shared-Use. No new telecommunications tower shall be built, constructed, or erected in the City unless such tower is capable of supporting or “co-locating” another person's operating telecommunications antennas and/or related equipment comparable in weight, size, and surface area to the telecommunications antennas and/or related equipment installed by the applicant on the tower within six (6) months of the completion of the tower construction.
- C. Setbacks. Setback requirements for approved telecommunications towers shall be measured from the base of the tower to the property line of the parcel of land on which it is to be located. Where adjacent to non-residentially used property, towers shall be setback a minimum distance equal to the height of the proposed tower. Towers located on parcels adjacent to property used for residential purposes shall be setback a minimum distance of two times or twice the height of the proposed tower.
- D. Separation. Separation distances between telecommunications towers shall be measured by drawing or following a straight line between the base of the existing tower or structure and the base of the proposed tower or structure. Proposed tower structures shall be separated by a minimum of fifteen hundred (1,500') feet from all other existing towers, whether monopole, self-supporting lattice, or guyed, or towers which have been issued a building or Conditional use permit but are not yet constructed at the time the building or Conditional use permit is granted.
- E. Structural Integrity. All telecommunications towers shall be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the building and other applicable codes adopted by the City, and any other standards outlined in these regulations.
- F. Design. All new towers shall be of a self-supporting mono-pole type design. Guyed or lattice towers shall be prohibited.
- G. Height. Telecommunications towers shall be exempt from the maximum height restrictions, if applicable, of the zoning districts where located. All such towers shall be permitted to a maximum height of one hundred (100') feet in residential zoning districts, one hundred and fifty (150') feet in commercial zoning districts or a height of two hundred (200') feet in industrial zoning districts.
- H. Signs and Advertising. The placement of signs or other forms of advertising on telecommunications towers, structures or equipment shelters regulated by the provisions of these regulations, other than one (1) identification sign not exceeding one (1) square foot in size, shall be prohibited.
- I. Lighting. Telecommunications towers shall not be artificially lighted except as may be required by the Federal Aviation Administration (FAA) or other State or Federal agencies having jurisdiction over the field of regulation of lighting. If such lighting is required, a description of the required lighting scheme shall be made a part of the application to install, build or modify the tower or telecommunications antenna and/or related equipment. For security purposes, equipment enclosures, cabinets or shelters may have lighting if the design chosen will cause the least disturbance to surrounding property.
- J. Fencing and Landscaping. All telecommunications sites or compounds, including towers and equipment enclosures, shall be surrounded by a minimum six (6') foot high fence. Such fencing shall be of residential quality, such as wood-privacy fencing, or if chain-link fencing is to be used, it shall be screened by evergreen vegetation, with an ultimate height of six (6') feet and a planted height of at least thirty-six (36") inches. The City may require landscaping in excess of the requirements of this Subsection in order to enhance compatibility with adjacent land uses.
- K. Access. A minimum of one (1) paved vehicular parking space, for periodic maintenance and service, shall be

provided on-site. Vehicle or outdoor storage shall be prohibited.

Sec. 37-07: Site Location Preferences. In siting new telecommunications towers, all applicant's shall be required, and shall demonstrate by substantive evidence, that due consideration has been given to the "co-location" of the applicant's telecommunications antenna and/or related equipment on existing towers or suitable alternative support structures or buildings, subject to the "order of preference" as follows:

- A. **First Preference.** The "co-location" of telecommunications antennas and/or related equipment on existing towers that are (1) Owned by the City or other governmental agency or public utility, or (2) Privately-owned, if "co-location" is not technologically or economically feasible on existing towers owned by the City or other governmental agency or public utility.
- B. **Second Preference.** The "co-location" of telecommunications antennas and/or related equipment on existing alternative support structures or buildings that are (1) Owned by the City or other governmental agency or public utility, if "co-location" is not technologically or economically feasible on existing towers, or (2) Privately-owned, if "co-location" is not technologically or economically feasible on existing towers or alternative support structures or buildings owned by the City or other governmental agency or public utility.
- C. **Third Preference.** The location of new towers on land located within "industrial" zoning districts that are (1) Owned by the City or other governmental agency or public utility, if "co-location" on existing towers or alternative support structures or buildings is not technologically or economically feasible, or (2) Privately-owned, if "co-location" on existing towers or alternative support structures or buildings owned by the City or other governmental agency or public utility is not technologically or economically feasible
- D. **Fourth Preference.** The location of new towers on land located within "commercial" zoning districts that are (1) Owned by the City or other governmental agency or public utility, if "co-location" on existing towers or alternative support structures or buildings, or the location of new towers, on land located within industrial zoning districts, is not technologically or economically feasible, or (2) Privately-owned, if "co-location" on existing towers or alternative support structures or buildings, or the location of new towers, on land located within industrial zoning districts, owned by the City or other governmental agency or public utility, is not technologically or economically feasible.
- E. **Other Location Preferences.** The location of new towers on land located within "residential" zoning districts that are (1) City-owned or owned by other governmental agencies or public utilities, if "co-location" on existing towers or alternative support structures or buildings, or the location of new towers, on land located within industrial or commercial zoning districts, is not technologically or economically feasible, or (2) Privately-owned, if "co-location" on existing towers or alternative support structures or buildings, or the location of new towers, on land located within industrial or commercial zoning districts, owned by the City or other governmental agency or public utility, is not technologically or economically feasible.

Sec. 37-08: Exemptions. Subject to compliance with the applicable provisions of these regulations, the following shall be considered "exempt" telecommunications towers, antennas and/or related equipment and shall be a permitted use of land in all zoning districts:

- A. The routine maintenance or repair of existing telecommunications towers, antennas and/or related equipment (excluding structural work or changes in height or dimensions of towers, antennas, buildings or enlargement of existing tower sites or compounds) provided that compliance with the standards of these regulations are maintained;
- B. Television and/or citizens band radio antennas subject to compliance with the applicable provisions of Chapter 4 of the Kankakee Zoning Ordinance/1995, as amended;
- C. The placement of dual-polar panel antennas on wooden or steel utility poles that do not to exceed forty (40') feet in height, provided that all related equipment is contained within a cabinet; and

- D. Other alternative telecommunications antennas and/or related equipment that “technologically” does not require the use of new towers, such as cable micro-cell equipment using multiple low-powered transmitters/receivers, as may be approved by the City.

Sec. 37-09: Permitted Uses. Subject to compliance with these regulations and the provisions of Section 37-07 (Site Location Preferences), the following shall be a permitted use of land in all zoning districts:

- A. The installation or attachment of additional, or replacement of, telecommunications equipment, including antennas and equipment shelters, to any existing tower, including, but not limited to, water and high-voltage transmission towers, existing on the effective date of these regulations or subsequently approved in accordance with these regulations, shall be permitted provided that any additional equipment shelters are located within the existing tower site or compound area.
- B. The installation or mounting of any telecommunications antennas and/or related equipment, which is not attached to a tower, shall be permitted on any alternative support structure or building that is at least fifty (50) feet in height, and provided that: (1) the height from grade of the attached antenna and/or related equipment does not exceed the height from grade of the alternative support structure or building by more than twenty-five (25%) percent; and (2) any telecommunications equipment and their appurtenances which are located above the primary roof of an alternative support structure or building shall be set back a minimum of one (1) foot from the edge of the primary roof for each one (1) foot in height above the primary roof of the alternative support structure or building. This setback requirement shall not apply to telecommunications antennas and/or related equipment which are located above the primary roof of an alternative support structure or building if such equipment is appropriately screened from view through the use of architectural panels, walls, fences, or other such screening techniques.

These setback requirements shall not apply to “disguised” telecommunications towers, antennas and/or related equipment which are mounted to the exterior of an alternative support structure or building below the primary roof line, but which do not protrude more than two (2') feet from the side of such alternative support structure or building.

Telecommunications antennas and/or related equipment proposed for location on alternative support structures or buildings that are less than fifty (50) feet in height or which will exceed the height from grade of the alternative support structure or building by more than twenty-five (25%) percent, may be permitted subject to the approval of a Conditional use permit as provided in Section 37-11 (Variation from General Requirements) of these regulations.

- C. The installation of telecommunications antennas and/or related equipment or the construction of a new tower on any land or building owned by the City, regardless of the zoning district in which such land is located, following the approval of a lease or other such agreement by the Mayor and City Council.
- D. The one (1) time replacement of any tower lawfully existing on the effective date of these regulations or subsequently approved in accordance with these regulations provided that such replacement tower is (1) designed to accommodate the shared-use or “co-location” of the tower or site, (2) is located on-site and within fifty (50) feet of the original tower, (3) is replaced by a self-supporting monopole type tower only, (4) does not exceed the height of the original tower by more than twenty-five (25%) percent. Subsequent replacements or proposed replacement towers that will exceed the requirements of this Subsection, may be permitted subject to the approval of a Conditional use permit as provided in Section 37-11 (Variation from General Requirements) of these regulations.
- E. Towers erected and maintained for a period of not more than thirty (30) days shall be permitted in all zoning districts for the purpose of replacing an existing tower, testing an existing or proposed telecommunications system or network, or special events requiring mobile towers.

Sec. 37-10: Conditional Use Permit Required. All proposals to install, build or modify a tower not exempted or

otherwise permitted in Section 37-08 (Exemptions) or Section 37-09 (Permitted Uses) of these regulations, or any proposals requiring a variation from these requirements as provided in Section 37-11 (Variation from General Requirements) of these regulations, including, but not limited to, tower height, setbacks from property lines, and tower separation distances, shall require the approval of a conditional use permit following a duly advertised public hearing by the Planning Board. Applications for Conditional use permits shall be filed and processed subject to the manner provided in Chapter 12 of the Kankakee Zoning Ordinance/1995, as amended.

- A. General Requirements. Any applicant proposing to construct a new telecommunications tower shall be required to demonstrate that (1) the tower must be located at the proposed site to satisfy its function in the applicant's telecommunications system or network, (2) the proposed height of the tower is the minimum height necessary to fulfill the towers function, and (3) the design of the proposed tower is such that it can provide for the "co-location" of at least one (1) other service providers telecommunications antennas and/or related equipment.

Applicants shall also demonstrate that they have made a diligent effort to "co-locate" their telecommunications antennas and/or related equipment on existing towers or usable alternative support structures or buildings, and to locate the proposed tower, in accordance with the "order of preference" requirements as established in Section 37-07 (Site Location Preferences) of these regulations, and that due to physical constraints and economic or technological feasibility, that "co-location" is not feasible and no other appropriate location for the proposed tower is available.

All applications for a Conditional use permit to construct a new telecommunications tower shall be considered by the City only upon the applicant having demonstrated that it is an FCC licensed telecommunications service provider or that it has agreements with an FCC licensed telecommunications service provider for use or lease of the proposed tower.

- B. Required Submittals. In addition to any information required for applications for Conditional use permits, pursuant to the provisions of Chapter 12 of the Kankakee Zoning Ordinance/1995, as amended, applicants for a Conditional use permit to construct a new telecommunications tower shall be required to submit the following:
1. A detailed site plan (based on a boundary survey or plat of the parcel and any leased portion thereof, if applicable) clearly indicating all existing and proposed improvements including, but not limited to (a) the location, type, and height of the proposed tower, (b) on-site land uses and zoning classification, (c) adjacent land uses and zoning classification, (d) proposed means of access, (e) setbacks from property lines, (f) proposed method of fencing and landscaping, showing specific landscape and fencing materials, (g) elevation drawings of the proposed tower and any other structures (h) topography, (i) parking, (j) method of lighting, if applicable or required under FAA regulations, and (k) other information that may be deemed by the Planning Board or City Council to be necessary to assess compliance with the provisions of these regulations;
 2. A map of the general area to be served by the proposed tower, indicating it's relationship to other existing towers, structures or buildings, which are at least seventy-five (75%) of the proposed design height of the tower, located within a one-half (½) mile radius of the proposed tower site, which, from a location standpoint, could potentially provide a part of the applicant's telecommunications system or network.
 3. Written "technical" evidence attesting to the fact that in order to satisfy its function in the applicant's telecommunications system or network, the proposed tower, antenna and/or related equipment must be located at the proposed site and that it cannot be installed or "co-located" on another person's tower or usable alternative support structure or building located within a one-half (½) mile radius of the proposed tower site;

4. Written “technical” evidence attesting to the fact the proposed height of the tower, antenna and/or related equipment is the minimum height necessary to fulfill its function in the applicant’s telecommunications system or network;
5. Written “technical” evidence attesting to the fact the proposed tower, antenna and/or related equipment meets the shared-use (“co-location”), structural integrity, and design requirements as set forth in Section 37-06 (General Requirements) of these regulations;
6. A written statement attesting to the fact that the applicant has made diligent, but unsuccessful, efforts to obtain permission to install or “co-locate” the applicant’s telecommunications antenna and/or related equipment on existing towers or potentially usable alternative support structures or buildings, which are at least seventy-five (75%) of the proposed design height of the tower, located within a one-half (½) mile radius of the proposed tower site.
7. A written statement attesting to the fact that the applicant has given due consideration to the possibility of “co-locating” their telecommunications antenna and/or related equipment on existing towers or alternative support structures or buildings, subject to the “order of preference” as established in Section 37-07 (Site Location Preference) of these regulations, and that due to physical, economic or technological constraints, that “co-location” is not feasible.
8. A written statement, by the applicant or tower owner, committing to make the proposed tower (in the event the tower is erected) available for use by other telecommunications service providers subject to “reasonable” technological and financial terms. The statement shall include a provision that the applicant or tower owner is fully aware that the willful and knowing failure of the applicant or tower owner to agree to shared-use or ”co-location” or to negotiate in good faith with potential users shall be unlawful and shall, among other remedies of the City, be cause for the withholding of the requested conditional use permit or any such future conditional use or building permits to the same applicant or tower owner to install, build or modify telecommunications towers within the City.
9. A general description of how the proposed tower is in compliance with the standards set forth in these regulations and all applicable Federal, State or local laws, and that the construction and use of the proposed tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent properties.
10. In order to assist in evaluating visual impact, the applicant shall submit photo simulations showing the proposed site of the tower with a photo-realistic representation of the proposed tower as it would appear as viewed from the closest residential property and from adjacent public rights-of-way.
11. The Planning Board or City Council may require an applicant to supplement any information that it considers inadequate or that the applicant has failed to supply. A conditional use permit may be denied on the basis that the applicant has not satisfactorily supplied the information required in this Section.

C. **Findings.** Findings relating to a proposal to install, build or significantly modify a telecommunications tower shall be made by the Planning Board, as provided in this Subsection, and no Conditional use permit for a new tower shall be approved by the City Council unless the applicant has clearly demonstrated, by substantive evidence, that due consideration has been given to “co-locate” the applicant’s telecommunications antenna and/or related equipment on existing towers or alternative support structures or the placement of the proposed tower on property owned by the City or other governmental agency or public utility, in accordance with the “order of preference” requirements established in Section 37-07 (Site Location Preferences) of these regulations, and that such alternatives

are not technologically or economically feasible. Current or emerging industry standards and practices, among other information, may be considered by the Council in determining feasibility.

In consideration of the issuance of a Conditional use permit to install, build or significantly modify a telecommunications tower, the Planning Board shall base its recommendation and the City Council shall base its decision upon the applicant having demonstrated, by substantive evidence, the following:

1. That in siting the proposed tower, the applicant has given due consideration to the “order of preference” as established in Section 37-07 (Site Location Preferences) of these regulations,
2. That no existing towers, structures or buildings located within the necessary geographic area of the proposed tower meets the applicant’s engineering requirements considering the height, structural strength, resulting signal interference, feasibility of retrofitting or of redesigning the applicant’s or service providers telecommunications system or network, or other limiting conditions that may render any potentially useable towers, structures or buildings, existing within the applicant’s required geographic area, technologically unsuitable.
3. That the fees, costs, or contractual provisions required by the land or tower owner in order to share or “co-locate” on an existing tower or alternative support structure or building or to adopt an existing tower for shared-use or “co-location” are economically unreasonable.
4. That no land, buildings or structures owned by the City or other governmental agency or public utility is available and economically and technologically suitable for locating the proposed tower;
5. That an alternative technology, that does not require the use of new towers, is technologically or economically unsuitable.
6. That the proposed tower meets the shared-use or “co-location” requirements established in Section 37-06 (General Requirements), of these regulations.

If any one, but not more than one (1), of the above determinations is not satisfied, approval of the Conditional use permit may be granted only upon a finding of unique circumstances otherwise necessitating approval to satisfy the purposes of these regulations.

Sec. 37-11: Variation from General Requirements. Notwithstanding the requirements provided in these regulations, a variation from these requirements, including, but not limited to, tower height, setbacks from property lines, and tower separation distances, may be approved by the City Council upon recommendation of the Planning Board, as a conditional use, in accordance with the requirements of this Section and the provisions of Chapter 12 of the Kankakee Zoning Ordinance/1995, as amended.

- A. **Required Submittals.** In addition to the application requirements for a Conditional use permit and the required submittals for a new tower, if applicable, applications for a variation from the requirements of these regulations shall also include the following:
 1. A description of how the proposed variation addresses any adverse impact that might occur as a result of approving the variation.
 2. A description of any off-site or on-site factors which may mitigate any adverse impacts which might occur as a result of approving the variation.
 3. Written “technical” evidence that documents and supports the information submitted by the applicant upon which the request for variation is based. The technical evidence shall be certified by an Engineer and shall document the existence of the facts related to the proposed variation(s) and its relationship to surrounding rights-of-way and properties.

B. Findings. The Planning Board and City Council shall consider an application for a variation from the requirements of these regulations based upon the following determinations:

1. That the proposed tower, antenna or telecommunications equipment, as it differs from the requirements of these regulations, will be compatible with and not adversely impact the character and integrity of surrounding properties; and
2. That off-site or on-site conditions exist which will mitigate the adverse impacts, if any, created by the proposed variation;

In addition to the requirements of this Subsection, in the following cases, the applicant must also demonstrate the following.

- a. That in the case of a requested variation from the “setback” requirements of Section 37-06 (General Requirements) for new towers, that the setback requirement cannot be met on the parcel of land upon which the tower is proposed to be located and the alternative for the applicant is to locate the tower at another site which is closer in proximity to residentially used land.
- b. That in the case of a request for variation from the “tower separation” requirements of Section 37-06 (General Requirements), the applicant has provided technical evidence that the proposed telecommunications tower, antenna and/or related equipment must be located at the proposed site in order to meet the coverage requirements of the applicant’s telecommunications system or network, and that the applicant is willing to create approved landscaping and other such buffers to adequately screen the tower from neighboring property.
- c. That in the case of a request for variation from the “height” limitation requirements of Section 37-06 (General Requirements) for new towers, that the height variation is necessary to meet the coverage requirements of the applicant’s telecommunications system or network, and the height of the proposed tower is the minimum height required to function satisfactorily.
- d. That in the case of a request for variation from the “height” limitation requirements of Section 37-09 (Permitted Uses) for telecommunications antennas and/or related equipment, proposed for location above the roof line of an alternative support structure or building, the height variation is necessary to facilitate the shared-use or “co-location” of telecommunications antennas and/or equipment in order to avoid construction of a new tower.

The Board or Council may include conditions on the site where the telecommunications tower, antenna and/or related equipment is to be located if such conditions are deemed necessary to preserve the character and integrity of the neighboring properties affected by the proposal and to mitigate any adverse impacts which may arise in connection with the approval of the variation.

Sec. 37-12: Certifications and Inspections. All towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of the building codes adopted by the City and all other construction standards set forth by Federal and State law. For new towers, such certification shall be submitted upon completion of construction of the tower, and every five (5) years thereafter. For existing towers, certification shall be submitted within one hundred and eighty (180) days of the effective date of these regulations and then every five (5) years thereafter. The tower owner may be required by the City to submit more frequent certifications should there be reason to believe that the structural and/or electrical integrity of the tower is jeopardized.

The City or its agents shall have authority to enter onto the property upon which a tower is located, between the inspections and certifications required above, to inspect the tower for the purpose of determining whether it complies with the City's adopted building codes and all other construction standards adopted by the City, and all applicable Federal and State laws. The City shall reserve the right to conduct such inspections at any time, upon reasonable notice to the tower owner. All expenses related to such inspections by the City shall be borne by the tower owner.

Sec. 37-13: Maintenance. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Towers, telecommunications antennas and/or equipment, including wires, cables, fixtures, and other equipment shall be maintained in substantial compliance with the requirements of the National Electric Code (NEC) and all Federal, State, and local regulations, and in such manner that will not interfere with the use of other property, and, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.

Sec. 37-14: Abandonment. In the event that the use of a tower is discontinued, the tower owner shall provide written notice to the City of its intent to discontinue use not less than ten (10) days from the date when the use will be discontinued. Upon discontinuance of the use of the tower, the tower owner shall, within ninety (90) days, dismantle and remove the tower. If it is determined by the City any tower has ceased to be used for a period of three hundred and sixty-five (375) consecutive days, and the tower owner has not notified the City of the discontinuance of use, as required in this Section, the City shall notify the tower owner that the site will be subject to a determination that such site has been abandoned. The tower owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the tower has been in use or under repair during the period. If the tower owner fails to show that the tower has been in use or under repair during the period, the City shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the tower owner shall, within ninety (90) days, dismantle and remove the tower.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That if any clause, section, or other part of these regulations shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of these regulations shall not be affected thereby, but shall remain in full force and effect.

SECTION 5: That this Ordinance shall be effective upon its passage, approval and publication in pamphlet form in the manner provided by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF KANKAKEE, KANKAKEE COUNTY,
ILLINOIS, THIS ____ DAY OF _____, 2001.

AYES: _____

ABSENT: _____

NAYS: _____

ABSTAIN: _____

Donald E. Green, Mayor

ATTEST:

Anjanita Dumas, City Clerk