

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 27-6 AND 27-236 AND ADDING SECTION 27-237 OF THE CODE OF CITY ORDINANCES OF THE CITY OF WARRENSBURG, MISSOURI, REGARDING AMATEUR RADIO SERVICES

WHEREAS, Amateur radio communications is a hobby in which licensees are not allowed to accept any compensation for amateur radio activities; and

WHEREAS, Amateur radio licensees are encouraged to participate in public service activities in support of public safety, health and welfare; and

WHEREAS, Amateur Radio is regarded as a national emergency response and public service support asset; and

WHEREAS, Amateur radio towers and antenna support structure have the potential to impact health, safety and the visual aesthetics of a neighborhood; and

WHEREAS, the City of Warrensburg considered PRB-1 (Federal Register 38,813-16, September 25, 1985) in developing the ordinance herein; and

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WARRENSBURG, MISSOURI, AS FOLLOWS:

Section 1. That Section 27-200 of the Code of City Ordinances, Table of Uses, is hereby amended to read as follows:

		ZONING DISTRICTS										
		R1	R2	R3	R4	RMH	BO	NB	CB	GB	LI	HI
19.100	TOWERS AND RELATED STRUCTURES											
19.400	Amateur Radio Facilities	C	C	C	C	C	C	C	C	C	C	C

Section 2. That Section 27-236 (a) of the Code of City Ordinances shall read as follows:

- (a) *Permitted uses.* The following uses shall be permitted in any zoning district subject to the issuance of a building permit by the city, provided that drawings and other documentation are submitted showing compliance with subsection (c) below. Nothing in this section shall be construed as regulating amateur radio services and facilities as defined by Sec. 27-237.

Section 3. That a new Section 27-237 is added as follows:

Sec. 27-237 Amateur Radio Services and Facilities

- (a) *Scope of Provisions.* Amateur radio services and facilities as defined in Section 27-237 (c) are allowed as a conditional use subject to the

requirements of this section and the issuance of a building permit by the City, except as follows:

(1) Not more than two (2) wire antennas, each four (4) NWG (0.20431 inches) or smaller, such as dipoles, inverted Vs and long wire antennas are allowed by right under the following conditions:

- a. The wire antennas can not be supported, attached or anchored to a tower; and
- b. The wire antennas must be installed at least ten (10) feet above the ground.

(b) *Purpose and intent.* In the development and execution of this section, personal and public communication needs are balanced with the need to protect the public health, safety, and general welfare of the community. Consideration is given to the impact on the visual aesthetics, beauty, safety and character of a neighborhood while reasonably accommodating amateur radio communications.

(c) *Definitions.* Whenever used in this section, the following words or phrases shall have the meanings ascribed to them:

Amateur radio facilities. A freestanding, guyed, or building-mounted structure, including any base, tower or pole, antenna, and appurtenances, intended for amateur radio services.

Amateur radio services or amateur radio communications. A radio communication service, including amateur-satellite service and amateur service, for the purpose of self-training, intercommunication, and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.

Antenna. Any system of wires, poles, rods, reflecting discs, or similar devices used for transmission or reception of radio signals or electromagnetic waves.

CFR. Code of Federal Regulations

FCC. Federal Communications Commission

Tower. Any structure whose principal function is to support an antenna.

(d) *Procedure for obtaining a Conditional Use Permit for Amateur Radio Facilities.*

(1) *Application.* The application and accompanying items as outlined here shall be filed with the zoning official. In light of the public benefit of amateur radio communication no application fee shall be charged for any application filed hereunder. After checking the application for accuracy, the zoning official shall place the matter on the agenda of

the planning and zoning commission for their review and recommendation. The application shall be on forms prescribed for that purpose by the zoning official and be accompanied by the following:

- a. The typewritten names, addresses and telephone numbers of all owners and their attorney and their designated representative, if any. A proper power of attorney signed by all owners and notarized showing authorization to act on behalf of all owners must also be presented.
- b. Names and addresses of all property owners within three hundred (300) feet of all sides of the subject property.
- c. A development site plan drawn to scale which shall include:
 - i. A north arrow.
 - ii. Property lines, setback lines, location of any easements and overhead utility wires or lines.
 - iii. Existing improvements on the property including residential dwellings, driveways, sheds, fences and any other structures associated with the primary use or accessory use of the lot or tract of land.
 - iv. Location of the proposed amateur radio facilities.
 - v. Location and type of any existing or proposed natural or vegetation or artificial screening of the proposed amateur radio facility.
 - vi. Location and type of proposed measures to secure the base of the tower.
- d. Land uses adjacent to the property.
- e. A written description of or plans and specifications for the proposed amateur radio facility including the overall height of the tower and antenna, whether a retractable tower or antenna will be used, any technical information on the antenna height required to operate at the licensed frequency at the proposed site, and an explanation of the technical and practical necessity for a tower at the requested height.
- f. The overall height of the residential dwelling and other structures associated with the primary use of the lot.
- g. A copy of the station's license required under 47 CFR § 97.5, and the operator license(s) that will run the station. A copy of

any documentation that was required by the FCC including the Environmental Assessment if one was required.

- h. A written description of the intended use of the amateur radio facility.

(2) *Application acceptance; notice to adjacent property owners.* Upon receipt of an application as provided in subsection (d) (1), the zoning official shall:

- a. Check the application for accuracy and return incomplete applications to the applicant within three (3) business days of receipt.
- b. Forward the application to appropriate city staff for review of the application and plans.
- c. Prepare a recommendation for the planning and zoning commission.
- d. Place the matter on the agenda of the next regular meeting of the planning and zoning commission occurring not less than twenty-five (25) days nor more than thirty-five (35) days after a complete and accurate application is filed with the city.
- e. Give written notice to the adjacent property owners for a distance of three hundred (300) feet from all sides of the property; as named in the application, of the proposed conditional use permit and of the date of the planning commission meeting at which the matter will be considered. The notices shall be mailed at least fifteen (15) calendar days before the date of the meeting.

(3) *Meeting with City staff.* Prior to review by the Planning and Zoning Commission, the applicant may request to meet with the City's zoning official to discuss the proposed amateur radio facility and how the goals of the City's zoning ordinance may be met while reasonably accommodating amateur radio communications and to discuss proposed conditions to assure that they are the minimum practical regulation to accomplish the City's legitimate zoning purposes.

(4) *Review by Planning Commission.* Before making a recommendation to the city council the planning and zoning commission shall review and consider the application for the conditional use permit in an open public meeting. At such meeting, both those in favor of and those opposed to the conditional use permit will be given reasonable opportunity to be heard. The commission shall transmit its recommendations to the city council in writing. If the commission makes no report to the city council within thirty (30) days following the meeting at which the complete application for the conditional use

permit was reviewed by the commission, it shall be considered to have approved the conditional use permit.

(5) *City Council Consideration.*

- a. The city council shall not conduct a public hearing with regard to, nor act upon a request until the planning and zoning commission shall have acted on the matter.
- b. After the findings of fact and recommendations of the commission have been filed with the city council or the requisite time period has passed, the city council shall hold a public hearing on the matter. The city council may not grant the conditional use permit until a public hearing has been held on such ordinance.
- c. Public notice. The zoning official shall cause public notice of the hearing to be published at least once in a newspaper of general circulation in the City of Warrensburg. Publication shall commence not less than fifteen (15) days before the hearing date. The notice shall include the date, time and place of the hearing, and state the conditional use permit application may be viewed at the municipal building. In addition, the notice shall also provide the following information:
 - i. The notice shall contain the approximate location or street address, the name of the petitioner; the present zoning district classification and the nature of the conditional use permit sought.
 - ii. A sign or signs shall be placed on each parcel of land for which the conditional use permit is being considered at the hearing before the city council. Said sign(s) shall be placed on affected parcels of land at least fifteen (15) days prior to the public hearing to be held by the city council. The sign(s) shall be posted at a point(s) nearest to the right-of-way of any street or roadway abutting such land, and so as to be clearly visible to the traveled portion of such street or roadway. The zoning official shall determine the number of additional signs to be placed that may be necessary to carry out the intent of this chapter. The sign(s) shall bear there on the following: "PUBLIC HEARING" and "APPLICATION FOR CONDITIONAL USE PERMIT FILED WITH THE CITY OF WARRENSBURG CITY COUNCIL. PUBLIC HEARING WILL BE HELD ON (insert date and time) IN THE MUNICIPAL BUILDING, 102 S. HOLDEN, WARRENSBURG, MISSOURI." The zoning official may provide for such additional information to be placed on any such sign which would

serve to fully inform the public as to the nature of the conditional use permit pending before the city council.

- iii. Give written notice to the adjacent property owners for a distance of three hundred (300) feet from all sides of the property; as named in the application, of the proposed conditional use permit and of the date of the City Council hearing at which the matter will be considered. The notices shall be mailed at least fifteen (15) calendar days before the date of the meeting.
 - d. At the hearing, staff shall make a recommendation to the city council, the applicant shall be heard, and those both in favor of and opposed to the conditional use permit will be given reasonable opportunity to be heard.
 - e. At the conclusion of the public hearing, the city council may proceed to vote on the proposed ordinance, refer it to a committee for further study, request the applicant meet with City staff to further discuss and negotiate appropriate conditions; or take any other action consistent with its usual rules of procedure. If the city council does not take final action on a proposed conditional use permit within sixty (60) days after final action of the planning and zoning commission, the proposed use permit shall be deemed approved.
 - f. If the report by the planning and zoning commission recommends the proposed conditional use permit be denied, or otherwise submits a negative recommendation, the conditional use permit shall become effective only by the favorable vote of four-fifths of all members of the city council.
- (6) *Judicial review.* Any person aggrieved by the decision of the city council shall be entitled to immediate judicial review under the provision of Section 536.150 RSMo and as amended by the filing of an appropriate action in the Circuit Court of Johnson County.
- (7) *Penalty for removal or defacing of signs.* It is unlawful for any person to tamper with any sign required for public notice.
- (e) *Standards for Review.* In passing upon the granting or denial of a conditional use permit for amateur radio facilities, the planning and zoning commission and the city council shall use the following standards in reviewing applications:
- (1) If the proposed conditional use may comply with the following requirements while still reasonably accommodating amateur radio communication:

- a. No amateur radio tower is allowed in the setback from streets and the setbacks from lot boundary lines required by the underlying zoning district.
 - b. No amateur radio tower is allowed to be licensed, operated, or otherwise used for purposes other than amateur radio services except for the placement of instruments for gathering meteorological or scientific data for personal and non-commercial use that constitute a de minimis use only.
 - c. The lower 8 ft. of an amateur radio tower must be secured to protect it from unauthorized access and vandalism.
 - d. No amateur radio tower may be illuminated by artificial means except for lighting specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower except for temporary seasonal lighting not to exceed 30 days.
 - e. No portion of the amateur radio facility may be used for signs other than warning or equipment information signs.
- (2) If the proposed conditional use is in accordance with the intent of, and furthers and promotes the goals of the City's Land Use Plan;
 - (3) If the proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public and will not cause substantial injury to the value of other property in the neighborhood in which it is to be located;
 - (4) If the location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations;
 - (5) If the nature and extent of proposed landscaping and screening and the location, nature and height of buildings, structures, walls, and fences on the site adequately screen the amateur radio facilities from the surrounding properties and neighborhood. Additional measures may be required as deemed necessary by the planning and zoning commission or the city council.
 - (6) If the applicant has proposed the use of a retractable antenna, or limiting the hours of operation, or restricted the height to the height shown to be technically necessary for the type of amateur radio station licensed by the FCC.
 - (7) If the application of the City zoning regulations and the requirements of this ordinance will reasonably accommodate amateur radio

communications and are the minimum practicable regulations to accomplish the goals of the Zoning Ordinance.

- (f) *Removal of Antennas and Towers.* Amateur radio facilities erected, constructed, or installed in accordance with the provisions of this Section shall be removed at such time that a licensed operator is no longer occupying the primary residential dwelling or other structure associated with the primary use on the lot.
- (g) *Nonconforming Use and Nonconforming Situations.* Amateur radio facilities installed as of the effective date of this ordinance shall be considered a nonconforming use and a nonconforming situation. Changes or modifications of the facilities shall be per the requirements of Sec 27-28 of the Code of City Ordinances.

Section 4. Severability Clause. If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or major sections, sentence, clauses, or phrases be declared invalid.

Section 5. It is intended the provisions of Sections One (1) through Three (3) of this ordinance shall become a part of the Code of Ordinances of the City of Warrensburg and it may be renumbered to accomplish that purpose.

Section 6. This ordinance shall be in force and effect after passage by the City Council.

Passed by the City Council this _____ day of _____, 2009.

Donna R. DeFrain, Mayor

Attest:

Cindy Gabel, City Clerk