

DOCUMENT NO. 6 (E)

MODEL ANTENNA ORDINANCE: NEWPORT BEACH, CALIFORNIA

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF NEWPORT BEACH ADDING CHAPTER 20.77
REGARDING AMATEUR RADIO ANTENNAS

The City Council of the City of Newport Beach does hereby
ordain as follows:

Section 1:

Chapter 20.77 is hereby added to the Newport Beach Municipal
Code to read as follows:

Sections:

Section 20.77.005	Findings.
Section 20.77.010	Definitions.
Section 20.77.020	Permitted Use.
Section 20.77.030	Development Standards.
Section 20.77.035	Application for Permit.
Section 20.77.040	Issuance of Permit.
Section 20.77.050	Appeal.
Section 20.77.060	Fees.
Section 20.77.070	Notice.
Section 20.77.075	Nonconforming Antennas.
Section 20.77.080	Separability.

Section 20.77.005. Findings.

The City Council of the City of Newport Beach, in adopting
this Ordinance, finds and declares as follows:

A. The Federal Communications Commission has
established a rule preempting state and local regulations that
operate to preclude amateur radio communications. However, the
FCC has not preempted local regulations involving placement,
screening or height of amateur radio antennas so long as the
regulations are based on health, safety or aesthetic
considerations, represent a reasonable accommodation of amateur
radio communications, and constitute the minimum practicable
regulation necessary to accomplish the local agency's legitimate
purposes.

B. Amateur radio antennas differ from other antenna,
such as roof-mounted television antenna, in terms of their size,

shape, weight and foundation requirements, and these factors
raise aesthetic, safety and welfare concerns that warrant special
regulation.

C. The regulation of amateur radio antenna, as
provided in this ordinance, is necessary to the health, safety
and welfare of persons living, working and owning property in the
City of Newport Beach in that:

1. The unique charm and beauty of the
residential, waterfront commercial, and recreational areas of the
City of Newport Beach contribute to high property values and
constitute the basis for a large percentage of the City's
economy. The failure to maintain, and enhance, the charm and
beauty of Newport Beach could result in reduced property values
and reduced revenue for those businesses that serve the many
visitors to Newport Beach.

2. The Land Use Policies in the General Plan and
Zoning Ordinances of the City of Newport Beach seek to maintain
and enhance those qualities that make Newport Beach one of the
most desirable places to live, work or visit. According to the
General Plan policies of the City of Newport Beach, a primary
objective is to preserve and protect those areas, buildings,
structures or natural resources which are of historic, cultural,
or aesthetic value to the community. The General Plan requires
the adoption of zoning ordinances and other controls to preserve
visual access to major natural features, such as the ocean and
bay, and insure that all public and private development is
compatible with the unique natural and manmade resources that
give Newport Beach its charm and character.

3. The unique charm and character of Newport
Beach is preserved, in large measure, by ordinances, policies and
regulations which, among other things, restrict and regulate the
height and location of structures, related facilities or
equipment and landscaping.

4. Amateur radio antennas, due to their height,
size, and overall appearance, have the potential to block or
impair views of natural and manmade features of importance to the
public and owners of property if left unregulated. The antennas,
because of their height and unique appearance, tend to dominate
the landscape and reduce visual open space. The overall

appearance of amateur radio antennas is inconsistent with the character and aesthetics of many of the existing residential, commercial and recreational areas within Newport Beach and the proliferation of such antennas could significantly reduce the charm and beauty of those areas, reduce property values, reduce income derived from tourism, and reduce the number of job opportunities available in the City.

D. The provisions of this Ordinance also protect the safety of persons living, and working, in Newport Beach in that free-standing amateur radio antennas do pose a threat to the safety of persons or property in the vicinity in the event of collapse. The provisions of this Ordinance, will help insure that amateur radio antennas are installed in a manner that insures the safety and security of persons and property living or working nearby.

E. The provisions of this Ordinance represent the minimum practical regulation necessary to satisfy the aesthetic, health, safety and welfare concerns that have prompted these minimal restrictions on amateur radio antennas.

F. It is the intent of the City Council that this ordinance be administered and interpreted to reasonably accommodate amateur radio communications, to constitute the minimum regulation necessary to accomplish the purposes of this Ordinance, and to impose no unreasonable cost on the amateur radio operators.

Section 20.77.010. Definitions.

A. Amateur Radio Antenna. The term "amateur radio antenna" shall mean any antenna which is used for the purpose of transmitting and receiving radio signals in conjunction with an amateur radio station licensed by the Federal Communications Commission.

B. Antenna Structure. The term "antenna structure" refers collectively to an antenna and its supporting mast or tower, if any.

C. Mast. The term "mast" shall mean a pole of wood or metal, or a tower fabricated of metal, used to support an amateur radio antenna and maintain it at the proper elevation.

D. Whip Antenna. The term "whip antenna" shall mean an antenna consisting of a single, slender, rod-like element, less than one wave length long, which is supported only at or near its base.

Section 20.77.020. Permitted Use.

Amateur radio antennas, structures and masts that comply with the development standards specified in Section 20.77.030 are permitted as an accessory use in all zoning districts subject to issuance of any other appropriate permit. Amateur radio antennas, structures and masts which do not conform to Section 20.77.030 shall be permitted subject to first securing an amateur radio antenna permit, and any other appropriate permits.

Section 20.77.030. Development Standards.

A. Lowering device.

All amateur radio antennas, capable of a maximum extended height in excess of 40 feet, with the exception of whip antennas, shall be equipped with a motorized device which permits easy raising and lowering of the antenna. *Or hand cranked*

B. Permitted height.

(1) The height of an antenna shall be measured from natural grade at the point the mast touches, or if extended would touch, the ground.

(2) When in operation, no part of any amateur radio antenna shall extend to a height of more than 75 feet above natural grade of the site on which the antenna is installed.

(3) When not in operation, no part of any amateur radio antenna, excepting whip antennas, shall extend to a height of more than 28 feet measured above natural grade of the site on which the antenna is installed.

C. Number permitted.

One amateur radio antenna structure and one whip antenna shall be permitted on each building site.

D. Siting/Setbacks.

The antenna structure shall be located on site in a manner which will minimize the extent to which the structure is visible to nearby residents and members of the general public. Antenna structures shall be considered to satisfy this criteria if:

1. No portion of the antenna structure or mast is located within any required setback area; and

2. No portion of the antenna structure or mast is within the front 40% of that portion of the building site that abuts a street; and

3. In the event a building site abuts two or more streets, the mast is not located within the front 40% of that portion of the building site where primary access is provided to the property.

Section 20.77.035. Application for Permit.

The development standards in Section 20.77.030 may be waived or modified by the Planning Director upon application for an amateur radio antenna permit. The application shall be on a form supplied by the Planning Department and shall be accompanied by the following information, maps and plans:

(1) Site plans drawn to scale and dimensioned, showing the proposed location of the antenna.

(2) Manufacturer's specifications of the antenna structure.

(3) Details of footings, guys, and braces.

(4) Details of attaching or fixing the antenna to the roof (if applicable).

(5) Elevations drawn to scale and dimensioned so as to fully describe the proposed structure.

(6) Statement of the reasons why strict conformance with the development standards specified in Section 20.77.030 will unreasonably interfere with the operator's ability

to receive or transmit signals or impose unreasonable costs on the amateur radio operator when viewed in light of the cost of the equipment.

Section 20.77.040. Issuance of Permit.

The Planning Director shall issue an amateur radio antenna permit if the applicant demonstrates that strict compliance with the development standards specified in Section 20.77.030 would unreasonably interfere with the applicant's ability to receive or transmit signals, would impose unreasonable costs on the operation when viewed in light of the cost of the equipment, or that strict compliance with the development standards is not, under the circumstances of the particular case, necessary to achieve goals and objectives of this Ordinance. In granting the permit, the Planning Director may impose conditions reasonably necessary to accomplish the purposes of this Ordinance, provided those conditions do not unreasonably interfere with the ability of the applicant to receive or transmit signals or result in extensive cost or expense.

Section 20.77.050. Appeal.

An applicant for an amateur radio antenna permit may appeal a decision of the Planning Director to the Planning Commission. The appeal must be filed within thirty (30) days after written notice of the decision of the Planning Director. The Planning Commission may preside over the appeal, or may appoint a hearing officer to take evidence and submit proposed findings and recommendations to the Planning Commission. The Planning Commission shall render a decision within thirty (30) days after the hearing or receipt of findings and recommendations from the hearing officer. In the event the applicant is not satisfied with the decision of the Planning Commission, the applicant may appeal to the City Council by filing written notice of appeal with the City Clerk within twenty-one (21) days following notice of the action of the Planning Commission. The hearing before the City Council shall be set within thirty (30) days from the date of the appeal. The City Council may appoint a hearing officer to take evidence and make findings and recommendations if the Planning Commission presided over the hearing. The City Council shall render its decision within thirty (30) days after the hearing on the appeal. The decision of the City Council shall be final.

Section 20.77.060. Fees.

No person shall be charged a fee for applying for a amateur radio antenna permit. Reasonable fees for an appeal to the Planning Commission or City Council shall be established by resolution of the City Council.

Section 20.77.070. Notice.

Whenever notice is required pursuant to the provisions of this Chapter, notice of a decision shall be deemed given when the decision is announced by the Planning Commission or City Council at the hearing on the appeal, or written notice of the appeal is deposited in the United States mail, first class, postage prepaid, and addressed as specified on the application for an amateur radio antenna permit.

Section 20.77.075 Nonconforming Antennas.

Amateur radio antennas, antenna structures, and masts in existence as of the effective date of this ordinance may continue to be used without complying with the provisions of this ordinance except as herein provided and shall be considered a legal nonconforming use. Amateur radio antennas, antenna structures, and masts that are a legal nonconforming use shall comply with the provisions of Section 20.77.030B (Permitted Height) to the extent that they are capable of doing so without modification. Amateur radio antennas, antenna structures and masts may be enlarged, expanded or relocated only if brought into compliance with the provisions of this ordinance, unless the expansion, enlargement or relocation is necessary to permit reasonable use of the amateur radio equipment served by the antenna and, in such event, an amateur radio antenna permit shall be obtained before any expansion, enlargement or relocation.

Section 20.77.080. Separability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance.

Section 2: The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) days

after its adoption. The Ordinance shall become effective on _____, 1988.

Section 3: This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 22nd day of February, 1988, and adopted on the _____ day of _____, 1988, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

ABSENT COUNCILMEMBERS _____

Mayor

ATTEST:

City Clerk