



Lungsod ng Bacolod

CITY ORDINANCE NO. 364
March 11, 2004

AN ORDINANCE IMPOSING CERTAIN CONDITIONS REQUIRED BY NATIONAL LAW, RULES AND REGULATIONS RELATIVE TO REGULATING THE DISTANCE OF BASE STATIONS OF CELLULAR MOBILE TELEPHONE SERVICE, PAGING SERVICE, TRUNKING SERVICE, WIRELESS LOCAL LOOP SERVICE AND OTHER WIRELESS COMMUNICATION SERVICE PRIOR TO ISSUANCE OF THE REQUISITE BUILDING OR SIMILAR PERMITS THEREFOR, AND PROVIDING SANCTIONS AND PENALTIES FOR VIOLATION THEREOF.

WHEREAS, part of the modernization of Bacolod City as an urban center is the proliferation of wireless means of communications, which invariably involve the putting up of towers or antennas;

WHEREAS, while needful for development and modern living, the setting up of the necessary towers, however, need to strictly comply with existing national laws, rules and regulations regulating its distance to residential communities, based on zoning and other requirements, among others;

WHEREAS, the existing national rule and regulation on the matter issued by the NTC, is entitled, "Locational Guidelines for Base Stations and Cellular Mobile Telephone, Paging Service, Trunking Service, Wireless Local Loop Service and other Wireless Communication Service";

WHEREAS, the said Guidelines, in No. VII thereof, actually allows the LGU to impose fines and penalties, subject to E.O. 72 providing for the Preparation and Implementation of the Land Use Plans of Local Government Code of 1991;

WHEREFORE, let it be ordained, as it is hereby ordained, by the Sangguniang Lungsod in session assembled that:

Title:

ORDINANCE IMPOSING CERTAIN CONDITIONS REQUIRED BY NATIONAL LAW, RULES AND REGULATIONS RELATIVE TO REGULATING THE DISTANCE OF BASE STATIONS OF CELLULAR MOBILE TELEPHONE SERVICE, PAGING SERVICE, TRUNKING SERVICE, WIRELESS LOCAL LOOP SERVICE AND OTHER WIRELESS COMMUNICATION SERVICE PRIOR TO ISSUANCE OF THE REQUISITE BUILDING OR SIMILAR PERMITS THEREFOR, AND PROVIDING SANCTIONS AND PENALTIES FOR VIOLATION THEREOF.

It shall also be known for its short title as the "Cellular Tower Ordinance" of Bacolod City,



Article 1. Definition of Terms. The following definition of terms are hereby adopted from the "Locational Guidelines for Base Stations and Cellular Mobile Telephone, Paging Service, Trunking Service, Wireless Local Loop Service and Other Wireless Communication Service" of the HLURB, as follows:

- a. Cellular Mobile Telephone Service (CMTS) - a public radio telephone service which, by means of mobile, portable, or fixed terminal equipment, gives two-way access to the public switched telephone network and other mobile telephone stations.
- b. Trunk Repeater Service - a kind of public repeater network service wherein a large number of subscribers share a group of communication paths.
- c. Radio Paging Service - a one-way radio paging service involving either alarm messages, voice or data messages.
- d. Wireless Local Loop (WLL) Service - a fixed wireless telephone replacing copper cable in a conventional telephone to the switching center with wireless link using antenna.
- e. Base Station - a part of a cellular network that provides coverage for subscribers. It contains radio, antenna and others.

Article 2. Scope and application. Per the aforesaid HLURB Guidelines, this locational guideline shall be applicable to all base stations for the following:

- Cellular Mobile Telephone Service
- Paging Service
- Trunking Service
- Wireless Local Loop (WLL) Service
- Other Wireless Communication Service.

Article 3. Reiteration of certain Requirements. Of the numerous requirements and procedures laid out in No. IV of the aforesaid guidelines, items g and h and A and B, are hereby reiterated, as follows:

Section 1. Written Consent

A. Subdivisions

A.1. Approval of the governing board/body of the duly constituted Homeowners Association (HOA) if base station is located within a residential zone with established HOA and including all members whose properties are adjoining the proposed site of the base station. (Refer to Figure 1)

A.2. In the absence of an established HOA, consent/affidavit of non-objection from majority of actual occupants and owners of properties within a radial distance equivalent to the height of the proposed base station measured from its base, including all those whose properties is adjoining the proposed site of the base station. (Refer to Figure 2)

B. Buildings

B.1. If a base station shall be constructed on top of an occupied building, consent from the owner/developer (Refer to Figure 3)

B.2. If a base station shall be constructed on top of an occupied building, the following shall be obtained:

B.2.a. Consent/affidavit of non-objection from owner/developer unless he has divested himself from all interest in the building and turned over ownership of common areas to the condominium or building association, and

B.2.b. Approval of the governing board/body of the duly constituted condominium association or building association including all tenants occupying the topmost floor directly below the base station and in addition, the consent of the owner and majority of tenants of the adjoining buildings. (Refer to Figure 4)

Section 3. Barangay Council Resolution endorsing the base station No building permit shall be issued for the setting up of any base station without the requisite favorable Barangay Resolution of the barangay concerned. Any favorable Barangay Resolution, to be effective, must first ascertain that the written consent of concerned parties as required in the preceding section has been secured. In case of opposition, a public hearing shall be conducted by the barangay concerned, and express its position thereon by way of Resolution, to be submitted to the Sangguniang Panlungsod.

Section 4. Site Inspection Likewise, no building permit shall be issued without the requisite inspection as required by the Guidelines, of the proposed site by the HLURB or LGU concerned pursuant to EO 72 and other related laws to validate existing structures within a radius of 200 meters and actual structures within a radius of 100 meters and submission of a verification/ocular report using the required format as provided for in the HLURB

Article 4. Minimum Locational Guidelines. As set forth in the aforesaid Guidelines, the following minimum locational guidelines are hereby reiterated:

A. Zoning Classification

A base station for a) Cellular Telephone Service, b) Public Mobile Telephone Service, c) Paging Service, d) Trunking Service, e) Wireless Local Loop and f) Other Wireless Communication Service may be located in the following zones/sites unless there are expressed prohibitions under existing laws and regulations.

1. On the Ground:

- 1.1. Air rights of transportation routes and railroads;
- 1.2. Within commercial, industrial, residential, institutional zones.

- 1.3. Within agricultural zones subject to the conversion order from the Department of Agrarian Reform;
- 1.4. Along existing buffer strips;

2. On top of existing structures which are structurally sound as attested and approved by a duly licensed/registered structural engineer.

B. Setback Requirement

Base stations shall conform with the setback requirements of the National Building Code and the Department of Health.

C. Perimeter Fence


A perimeter fence as per specifications in the DOH radiation protection evaluation report shall be constructed to prevent access of the public to the antenna.

Article 5. Rules for VHF towers.

Section 1. The local government of Bacolod City shall likewise support the implementation of similar rules and regulations of the NTC (National Telecommunications Commission) for construction/installation of VHF cellular towers.

Section 2. As such, prior to the issuance of the requisite building permit by the Building Official, it shall be examined by the said office that the proposed construction/installation has the requisite Health Clearance issued by the RIB (Radiation Impact Service) of the Department of Health, an ECC (Environmental Compliance Certificate) or CNC (Certificate of Non-Coverage) as the case may be of the DENR, Flight Clearance Permit issued by the ATO (Air Transportation Office), Zoning Clearance, the "conformity of Host Community" which is a requirement submitted to the Barangay Council prior to the issuance of the Barangay clearance, signed by residents surrounding the proposed site within the distance requirement indicating that they are not opposed to the construction of the cellular tower, and the Barangay Clearance.

Article 6. Sanctions for Violations. A violation of any of the requirements of this ordinance shall subject the violator thereof to the following sanctions:

- a. a cease and desist order by the City through the Mayor pending compliance with any requirement that was not complied with;
 - b. permanent stoppage of the work for failure to comply with the said requirement after lapse of time within which to comply as contained in the notice of violation or closure order;
 - c. permanent stoppage of the work, or the removal of any work done, for violations that have not or cannot be remedied or corrected;
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d. the building official of the city who issues a building permit for the construction of any base station, antenna or tower in violation of any of the provisions of this ordinance shall be subject to administrative and/or criminal prosecution as the situation may warrant under Civil Service Rules and general and special penal laws. It is understood that the complaint can be brought by the City, or by any affected party.

Article 7. Separability Clause. Should any portion of this ordinance be held ultra-vires or unconstitutional by competent authority, the remainder not so held shall continue to be in force and effect insofar as it is susceptible to enforcement or application.

Article 8. Effectivity This ordinance takes effect immediately upon compliance with publication requirements as set forth by law.

CARRIED BY THE VOTE OF:

Affirmative:

Councilors: Roberto M. Rojas, Jude Thaddeus A. Sayson, Ana Marie V. Palermo, Celia Matea R. Flor, Jose H. Gabuat, Lyndon P. Caña, Elmer T. Sy, Bobbie S. Lucasan, Greg G. Gasataya, Reynold I. Iledan, Gonya M. Verdellor, Arturo V. Parreño

Negative: None

Absent: None

Authors: Councilors Lyndon P. Caña, Jude Thaddeus A. Sayson and Archie S. Baribar.

Official Leave: Councilor Marx Louie S. de la Rosa.

Passed: March 11, 2004 (138th Regular Session).

Comments: Passed.
Councilor Archie S. Baribar was not yet around when this ordinance was passed.

RAMIRO L. GARCIA, JR.

*Vice Mayor
Presiding Officer*

4/5/04

TESTED:

ATTY. NILO T. ALEJANDRINO

Secretary to the Sanggunian

APPROVED: April 2004

LUZVIMINDA S. VALDEZ

City Mayor

10 DAYS LAPPED
AS OF 4/7/04