

Ham Radio Antennas: What Does the Law Require of Localities or Municipalities?

By
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A series of materials instruct states, localities and municipalities (hereafter “localities”) as to what the law requires when a radio ham applies for an antenna permit. This challenge of localities is that they must meet each and every element of these requirements. This paper is designed to be helpful to localities in drafting an ordinance, by offering a series of questions, with the answer that is necessary for the ordinance to withstand a court challenge.

FCC Materials

PRB-1. The full text of the FCC’s seminal 1985 Order, known as PRB-1, may be found at <http://www.fcc.gov/wtb/amateur/prb-1.html>. While characterized as a “Memorandum Opinion and Order”, it has the full force of a Federal regulation or statute, and may preempt state or local law. *Fidelity Federal Savings & Loan Ass’n v. de la Cuesta*, 458 U.S. 141 (1982).

Localities must take heed of several provisions of PRB-1:

24. . . . [T]here is . . . a strong federal interest in promoting amateur communications.
25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. . . . [L]ocal regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.

Thus, the locality must answer “yes” to each of the following questions:

- Is the ordinance crafted to reasonably accommodate amateur communications? [Note: If the ordinance was crafted to restrict antenna systems in ways that prevent or inhibit amateur communications, presenting unusual hurdles to amateur radio applications not present in similar accessory uses, the answer would be no.]
- Does the ordinance represent the minimum practicable regulation to accomplish the authority’s legitimate purpose? [Note: If the ordinance is not the minimum necessary, the answer would be no.]

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