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STANDARDS FOR WIRELESS COMMUNICATION FACILITIES

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20.01 Purpose. The purpose of this ordinance is to promote the health, safety, and general welfare of the residents of the County and the general public and to protect property values and aesthetic conditions within the County by providing effective regulation and restriction of wireless communication facilities by establishing minimum standards for the siting of towers, antennas, and wireless communication facilities in Manitowoc County. This ordinance is intended to encourage the collocation of new and existing tower sites; to minimize the total number of towers throughout the county; to encourage the users of towers and antennas to configure them in a way that minimizes their adverse visual impact; to encourage the location of towers in non-residential areas and in areas where the adverse impact on the community is minimal; and to enhance the ability to provide the communications services quickly, effectively, and efficiently.

20.02 Jurisdiction. This ordinance shall apply to all lands and waters within the boundaries of Manitowoc County lying outside the limits of incorporated cities and villages, but shall not be in effect in any town until approved by the Town Board of that town in accordance with Wis. Stat. § 59.69.

20.03 Definitions. For the purpose of this ordinance, the following terms shall have the meanings indicated:

(1) Alternative Tower Structure means any man-made structure, such as a bell steeple, building, clock tower, light pole, silo, or water tower, which is used to mount, camouflage, or conceal the presence of an

antenna or tower.

(2) Antenna means any apparatus used to send or receive electromagnetic waves, digital signals, radio frequencies, or wireless communications signals and includes, but is not limited to, any array; directional, omnidirectional, or whip antenna; panel; or dish.

(3) Board of Adjustment means the Manitowoc County Board of Adjustment established pursuant to MCC § 8.19.

(4) Code Administrator means the Manitowoc County Code Administrator appointed pursuant to MCC § 8.18(2), or his or her designee.

(5) Collocation means the location of more than one antenna on a single tower or alternative tower structure.

(6) FAA means the Federal Aviation Administration.

(7) FCC means the Federal Communications Commission.

(8) Height, when referring to a tower or other structure, means the distance measured from ground level to the highest point on the tower or other structure, even if the highest point is an antenna attached to the tower or other structure.

(9) Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas and includes, but is

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not limited to, guy towers, monopole towers, self-supporting lattice towers, and alternative tower structures used in providing wireless communications.

(10) Tower Site means the area surrounding a tower and any antenna, fencing, landscaping, lots, structure, supporting equipment, tower, or other object, equipment, or thing used in connection with the tower.

(11) Wireless Communications means any personal wireless services as defined in the Federal Telecommunications Act of 1996, including FCC licensed commercial wireless telecommunications services such as cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), global system of mobile communication (GSM), paging, or other similar services which presently exist or which may be developed.

(12) Wireless Communications Facility means any antenna, tower, or tower site used to provide wireless communications.

20.04 Scope. This ordinance shall apply to all towers, antennas, tower sites, and wireless communication facilities, except that towers and antennas under seventy feet (70') in height that are either owned and operated by federally-licensed amateur radio station operators or that are receive-only antennas shall be exempt from this ordinance.

20.05 Pre-existing Towers and Antennas. Towers and antennas which were constructed prior to the effective date of this ordinance shall not be subject to this ordinance, except as provided herein. A pre-existing tower or antenna which is damaged by fire, storm, or other casualty or which requires replacement may be repaired, reconstructed, or replaced provided that the repaired, reconstructed, or replaced tower or antenna complies with its original special use permit and the repaired, reconstructed, or replaced tower or antenna does not exceed the height of the original tower or antenna. Any improvements to a pre-existing tower or antenna that are inconsistent with the original special use permit or which increase the height of the original tower or antenna shall comply with this ordinance.

20.06 General Provisions. (1) Principal or

Accessory Use. Towers and antennas may be considered either principal or accessory uses. The presence of an existing structure on a lot or a different existing use for a lot shall not preclude the installation of an antenna or tower on such lot as an accessory use. For the purpose of determining whether the installation of a tower or antenna complies with zoning regulations, including but not limited to setback requirements and lot coverage requirements, the dimensions of the entire lot shall control, even though the antenna or tower may be located on a leased parcel within a lot. Towers that are constructed and antennas that are installed in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

(1p) Construction Standards. (a) Towers shall be of monopole construction to the extent practicable. If monopole construction is not practicable, towers shall be of free-standing construction to the extent practicable. If monopole or free-standing construction is not practicable, towers may be guyed.

(b) Towers shall be, to the extent practicable, less than 200 feet in height.

(2) Aesthetics and Lighting. (a) Towers shall be maintained with a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness and blend in with the natural setting and surrounding buildings.

(b) The design and construction of the buildings and related structures at a tower site shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will cause the tower facilities to blend in with the natural setting and surrounding buildings.

(c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(d) Towers shall not be artificially lighted unless such lighting is required by the FAA or another

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government authority. If lighting is required and more than one lighting alternative is available, the lighting alternatives shall be fully described in the permit application. The Board of Adjustment shall issue a permit for the design that it determines will cause the least visual disturbance to the surrounding views.

(3) Federal Requirements. All Towers shall meet or exceed such current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas as are in effect at the time the tower is placed in service at the tower site.

(4) Other Requirements. (a) Towers and antennas shall not be used to display any advertising, but may display such identifying information as FCC registration numbers, frequencies, or call letters, as may be required by federal or state law, regulation, rule, or order. The Board of Adjustment may permit the additional display of FCC registration numbers, frequencies, or call letters in a manner or form other than required provided that such display is not inconsistent with the intent of this ordinance.

(b) If a tower is located on a leased parcel of land, the term of the lease for the tower site shall not exceed a ten year period unless the lessor complies with the provisions of MCC Ch. 12 providing Subdivision Regulations for Manitowoc County.

(c) No tower shall exceed five hundred feet (500') in height.

20.07 Permitted Uses. (1) A permit is required from and will be issued by the Manitowoc County Code Administrator for the following uses:

(a) Locating an antenna that adds no more than twenty-five feet (25') to the height of an alternative tower structure, including the placement of additional buildings or equipment used in connection with said antenna.

(b) Installing an antenna on an existing tower that adds no more than twenty-five feet (25') to the height of the existing tower, including placement of additional buildings or other supporting equipment used in connection with said antenna.

20.08 Conditional Use Permits. (1)

Conditional Uses. Construction of a tower or placement of an antenna that adds more than twenty-five feet (25') to the height of a tower or an alternative tower structure, including the placement of additional buildings or other supporting equipment, shall require a Conditional Use Permit.

(2) Permit Authority. The Board of Adjustment may authorize the Code Administrator to issue a Conditional Use Permit after review, a public hearing, and consideration of the factors identified in MCC § 20.08(4), provided that such conditional use is in accordance with the purpose and intent of this ordinance and is found not to be hazardous, harmful, offensive, or otherwise adverse to the environment or the economic or aesthetic value of the area.

(3) Public Hearings. Public hearings on applications for Conditional Use Permits under this ordinance shall be held by the Board of Adjustment following receipt of a Conditional Use Permit application by the Code Administrator. The notice of hearing shall be published as a Class II notice in accordance with Wis. Stat. § 985.07. The Board of Adjustment shall notify all abutting or opposite property owners, as listed by the applicant in the original application, of the time, date, and subject matter of the hearing. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on the application.

(4) Factors Considered in Granting Permits. The Board of Adjustment shall consider the following factors in determining whether to issue a permit, although the Board of Adjustment may waive or reduce the burden on the applicant of one or more of these criteria if the Board of Adjustment concludes that the intent of this ordinance is better served thereby:

(a) Effect of the height of the proposed tower on the safety of aircraft within three miles of the airport during landing approaches;

(b) Proximity of the tower to residential structures and residential district boundaries;

(bm) Concerns of adjacent property owners;

(c) Nature of uses on adjacent and nearby properties;

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(d) Surrounding topography;

(e) Surrounding tree coverage and foliage;

(f) Design of the tower, with particular reference to design characteristics, including any required lighting, that have the effect of accommodating other users and reducing or eliminating visual obtrusiveness;

(g) Proposed ingress and egress; and

(h) Availability of suitable existing towers and other structures.

(5) Availability of Suitable Existing Towers or Other Structures. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Adjustment that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:

(a) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.

(b) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

(c) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

(d) The applicant's proposed antenna would cause interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

(e) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Such costs shall be presumed to be unreasonable if they exceed the cost of a new tower site.

(f) The applicant demonstrates that there are other limiting factors that render existing towers and

structures unsuitable.

20.09 Collocation and Accommodations of Other Users. (1) Each proposed tower and tower site shall be designed and constructed so as to permit the collocation of at least three technologically compatible antennas and to allow for the rearrangement of antennas upon the tower, the placement of antennas at varying heights, and the accommodation of necessary support buildings and equipment.

(2) The collocation and accommodation requirement may be reduced, modified, or waived by the Board of Adjustment upon a showing that such collocation is not technically feasible or is not required to serve the intent of this ordinance.

(3) The holder of a tower permit approved after the effective date of this ordinance shall, if technologically and structurally feasible, allow collocation of additional antennas by one or more other users and shall not make access to the tower and tower site economically unfeasible by charging a user more than the reasonable market rate for the proposed use.

(4) If the Board of Adjustment determines that the holder of a permit approved after the effective date of this ordinance has made access to a tower or tower site economically unfeasible, then the permit holder shall be subject to the penalties set forth in MCC § 20.16(2).

20.10 Setbacks and Separations. (1) Towers, guy wires, guy wire anchors, and accessory facilities must satisfy all applicable zoning ordinance and setback requirements.

(2) The following setback requirements shall apply to all towers and antennas for which a permit is required, however the Board of Adjustment may reduce a setback requirement if the intent of this ordinance would be better served thereby:

(a) Towers shall not be located within five hundred feet (500') of any residence other than a residence which is located on the parcel on which the tower is located.

(b) Towers shall be setback a distance equal to the height of the tower from the nearest property

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line. The Board of Adjustment may reduce the setback requirement for a particular tower to not less than twenty-five feet (25') if the Board of Adjustment determines that the reduction would better serve the current or future use of the property, that the design of the tower adequately prevents its collapse onto adjacent property, and that the reduction is consistent with the purposes of this ordinance and the Manitowoc County Code.

20.11 Security and Fencing. Tower sites shall be protected by security measures such as anti-climbing devices and fencing sufficient to deter the general public from obtaining access to the site and tower.

20.12 Landscaping. The following requirements shall govern the landscaping at tower sites, however the Board of Adjustment may waive such requirements if the intent of this ordinance would be better served thereby:

(1) Tower sites should be landscaped with a buffer of plant material that is intended to minimize the visual impact of the tower site on surrounding properties, including a landscaped strip at least four feet (4') wide outside the perimeter of the security fencing. In locations where the visual impact of the tower is minimal, the landscaping requirement may be reduced, modified, or waived.

(2) Existing mature tree growth and existing terrain on the site shall be preserved to the maximum extent possible.

(3) Additional landscaping shall not be required at a tower site beyond that which is described in the application for a Conditional Use Permit.

20.13 Removal of Abandoned Antennas and Towers. (1) Any antenna or tower that is not operated for a continuous period of twelve months shall be considered abandoned. Where two (2) or more antennas are collocated on a single tower, the tower shall not be deemed abandoned until every antenna on the tower has not been operated for a continuous period of twelve (12) months.

(2) The Code Administrator may issue a Notice of Abandonment to the owner of any tower that the Code Administrator determines to be abandoned within the meaning of MCC § 20.13(1). The Code

Administrator shall withdraw a Notice of Abandonment if information provided by a tower owner within thirty (30) days from the date of such Notice, causes the Code Administrator to determine that the tower has not been abandoned.

(3) The owner of an abandoned antenna or tower or the owner of the property where the tower site is located shall remove the abandoned antenna or tower, including all supporting equipment and buildings, within ninety (90) days of receipt of a notice of abandonment from the Code Administrator.

(4) If the abandoned antenna or tower is not removed to the satisfaction of the Code Administrator, the Code Administrator may remove and salvage the antenna or tower and all supporting equipment and buildings at the property owner's expense.

(5) The applicant for a permit under this ordinance shall submit a copy of a signed agreement between the property owner and owner of the tower, antenna, and supporting equipment and buildings setting forth the arrangement for the removal of any abandoned antenna or tower pursuant to this section. The agreement shall also provide that it shall be binding on any and all future owner or successors in interest of the property, tower, antenna, and supporting equipment and buildings.

20.14 Violations. It shall be unlawful for any person, firm, or corporation to install or locate any antenna, tower, wireless communication facility, or related buildings, equipment, or structures in Manitowoc County in violation of any of the provisions of this ordinance.

20.15 Administration. (1) This ordinance will be administered by the Code Administrator.

(2) **Inspection Authority.** A person shall, as a condition of any application for a permit and any permit issued pursuant to this ordinance, grant the Code Administrator permission to enter upon any lands specified in the application or permit, in order to determine compliance with this ordinance. If permission to enter lands is not given, entry may be gained pursuant to Wis. Stat. sec. 66.0119.

(3) **Citation Authority.** The Code Administrator may issue a citation for any violation

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of this ordinance.

(4) Referral Authority. The Code Administrator may refer a violation of this ordinance to Corporation Counsel for legal action.

(5) Other Enforcement Means. Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

20.155 Violations. (1) It is unlawful for a person to violate any provision of this ordinance.

(2) It is unlawful for any person to knowingly provide false information, make a false statement, or fail to provide or misrepresent any material fact to a county agent, board, commission, committee, department, employee, officer, or official acting in an official capacity under this ordinance.

(3) A separate offense is deemed committed on each day that a violation occurs or continues.

(4) The failure of any agent, board, commission, committee, department, employee, officer, or official to perform any official duty imposed by this code will not subject the agent, board, commission, committee, department, employee, officer, or official to the penalty imposed for a violation of this code unless a penalty is specifically provided.

20.16 Penalties. (1) A person will, upon conviction for a violation of this ordinance, forfeit not less than \$100 nor more than \$1,000 for each offense, together with the costs of prosecution for each violation and may be ordered to take such action as is necessary to abate the offense, including discontinuing the use and removing any antenna, building, support structure, or tower within a specified time.

(2) The minimum and maximum forfeitures specified in this section are doubled each time that a person is convicted for the same violation of this ordinance within any 24 month period.

(3) A person who has the ability to pay a forfeiture entered pursuant to this ordinance, but who fails or refuses to do so may be confined in the county jail until the forfeiture and costs are paid, but the period of confinement may not exceed 30 days.

In determining whether a person has the ability to pay, all items of income and all assets may be considered regardless of whether the income and assets are subject to garnishment, lien, or attachment by creditors.

(4) In the event an offense is not abated as ordered, Manitowoc County may take such action as is necessary to abate the offense and the cost of such abatement will become a lien upon the person's property and may be collected in the same manner as other taxes.

20.17 Fees. The fee for a Conditional Use Permit under this ordinance shall be set by the Manitowoc County Planning and Park Commission and shall be consistent with fees charged for other conditional use permits.

20.18 Relation to Other Ordinances. All ordinances or parts of ordinances inconsistent with or in contradiction of the provisions of this ordinance are hereby repealed.

20.19 Effective Date. This ordinance shall take effect in each town immediately upon its approval by a majority of the Town Board.

HISTORY

10/16/2007: Sec. 20.15 repealed and recreated, sec. 20.155 created, and sec. 20.16 repealed and recreated by Ord. No. 2007/2008-74 effective October 25, 2007.