

CHAPTER 23

TOWER SITING ORDINANCE

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23.01 Purpose. The purposes of the regulations and requirements of this chapter are to:

(1) Accommodate the communication needs of residents and businesses while protecting the public health, safety and general welfare. This ordinance is not intended to have the effect of prohibiting wireless services to or within the County.

(2) Facilitate the provision of wireless communication facilities through careful siting and design standards.

(3) Minimize adverse visual effects of wireless communication facilities through careful siting and design standards.

(4) Avoid potential damage to adjacent properties from the placement, construction and operation of wireless communication facilities through structural standards and setback requirements.

(5) Maximize the use of existing and approved towers and structures to accommodate new wireless communication antennas, to reduce the number of towers needed to serve the industry.

(6) To allow for open competition and substantially equal opportunity for providers of functionally equivalent services to establish such services within the County.

23.02 Definitions. (1) ANS/TIA/EIA. American National Standard/Telecommunication Industry Association/Electronic Industrial Association.

(2) ANTENNA. Any device or equipment used for the transmission or reception of electromagnetic waves, which may include an onmi-directional antenna, directional antenna or parabolic antenna.

(3) APPLICANT. Any person, provider, firm, partnership or company who files

an application for any permit required by this ordinance for the construction, replacement, or alteration of a wireless communication facility or any component thereof.

(4) COLLOCATION. The location of more than one (1) antenna or set of antennas of more than one (1) government or commercial wireless communication service provider on the same tower structure.

(5) FAA. Federal Aviation Administration.

(6) FCC. Federal Communications Commission.

(7) HEIGHT. The distance measured from ground level to the highest point on any tower or structure, including any antenna.

(8) HIGH POWER TRANSMISSION LINE. A 68 kV or greater electric transmission line with towers at least 75 feet in height.

(9) TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas, including guy towers, monopole towers and self-supporting lattice towers, including any support thereto.

(10) TOWER ACCESSORY STRUCTURE. Any structure located at the base of a tower for housing base receiving or transmitting equipment.

(11) WIRELESS COMMUNICATION. Any wireless services as defined in the Federal Telecommunications Act of 1996, including FCC licensed commercial wireless telecommunications services such as cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), global system of mobile communication (GSM), paging, television broadcast or commercial radio facilities and similar services that currently exist or may be developed.

(12) ZONING ADMINISTRATOR. The Director of Planning and Zoning or his or her designee.

23.03 Jurisdiction. The jurisdiction of this Chapter shall be limited to the unincorporated areas of Sauk County. The effective date of this ordinance shall be pursuant to §59.69(5) Stats. Any town which has adopted a zoning ordinance pursuant to §60.61 or §60.62 Stats., may elect to render this Chapter unenforceable in said town by ordinance as herein provided. An ordinance passed by a town pursuant to this section must be considered and passed at a regular meeting of the town board, by a majority vote of all town board members entitled to a seat on the board, and after passage, a certified copy of the ordinance must be filed with the Sauk County Clerk on or before April 1, 2000. No town may exercise this option after April 1, 2000.

23.04 Applicability. (1) Preexisting towers and antenna support structures.

(a) Any tower or antenna supporting structure for which a permit has been issued prior to the effective date of this chapter shall not be required to meet the requirements of this chapter, other than the requirements of Section 23.05, Subsections (1) and (6).

(b) Any addition, reduction or modification to any preexisting tower or antenna supporting structure that substantially modifies the number, placement or types of antennas on that tower or structure shall make such tower or structure subject to all applicable requirements of this ordinance. A substantial change is one in which fifty percent (50%) or more of the antenna design capacity upon the tower or structure is modified. It is the intention of this subsection that the owner/operator of the tower or structure not be required to move the physical structure, unless said modification is determined by the Zoning Administrator to create a physical threat to the public safety.

(c) Any preexisting tower or antenna supporting structure that fails, or becomes structurally unsound such that the tower or antenna supporting structure must be replaced or requires repairs costing greater than fifty percent (50%) of the value of said tower or antenna support

structure, shall be required to meet all provisions of this ordinance.

(d) The provisions of this Chapter shall not apply to the replacement of an existing lawful tower with a height of seventy-five (75) feet or more providing communication services for the State of Wisconsin or any of the State's political subdivisions on the same property as the existing tower provided that both the existing tower and the replacement tower provide communication services for the State of Wisconsin or any of its political subdivisions. The existing tower must be completely removed from the site upon construction of the replacement tower and the replacement tower shall not exceed three-hundred (300) feet in height. The replacement tower must continue to provide communication services for the State of Wisconsin and/or any of its political subdivisions during the life of said tower or the tower shall be promptly removed or come into full compliance with all requirements of this ordinance. Any tower in excess of three-hundred (300) feet shall fully comply with this Chapter.

(2) District height limitation. The requirements set forth in this chapter shall govern the design and siting of towers that exceed the height limitations specified for each zoning district under Chapter 7, SCCO.

(3) Amateur radio. This ordinance shall not govern the installation of any tower or antenna support structure that is owned and/or operated by a federally licensed amateur radio operator, that is less than 75 feet in height and is placed at a distance equal to or more than one and one-half the height of the tower from any adjacent property line.

(4) Towers or additions of minimal height.

(a) This ordinance shall not govern the installation or maintenance of any tower not more than 75 feet in height, other than as required in (c) below.

(b) This ordinance shall not govern the installation or maintenance of any addition to an existing structure, the purpose of which is to attach an antenna, which does not raise the overall height of that structure by more than 20 feet in height, other than as required in (c) below.

(c) A land use permit must be acquired prior to the construction or modification

of any tower or structure if otherwise required by any law, administrative rule or ordinance.

23.05 General Requirements. (1) All towers and antennas shall comply with all FCC and FAA regulations.

(2) Applications to construct or modify a telecommunications facility shall be acted on within a reasonable period of time. This provision is intended to ensure due course processing and review of such applications and does not establish any right to preferential treatment.

(3) Design and installation of all towers shall comply with the manufacturers' specifications and with ANS/TIA/EIA standards. Plans shall be approved and stamped by a professional engineer registered in the State of Wisconsin.

(4) Installation of all towers shall comply with applicable state and local building and electrical codes.

(5) For leased sites, written authorization for siting the wireless communication facilities from the property owner must be provided as set forth in Section 23.09(2)(c).

(6) All wireless communication facilities must be adequately insured for injury and property damage, proof of which shall be provided with the application.

(7) All unused towers must be removed within six (6) months of cessation of operation or use, unless a written exemption is provided by the Zoning Administrator. After the facilities are removed, the site shall be restored to its original condition or as close as possible. If removal and/or restoration is not completed within 90 days of the expiration of the six (6) month period specified herein, the County may complete removal and site restoration and any cost shall be assessed against the property as a special assessment.

(8) Proposals to erect new towers shall be accompanied by any required federal, state or local agency licenses or applications for such licenses.

(9) Only one (1) tower is allowed on a parcel of land. Positioning of multiple users upon a single tower is the preferred method of siting multiple antennas. Applications to place multiple towers upon a single parcel (collocation) shall

require credible evidence that multiple positioning is not practical. Additional towers upon a single parcel may be allowed with a special exception permit, and such towers shall be placed as close together as is technically feasible.

(10) No application to place a telecommunications tower may be denied based upon the potential effects of non-ionizing electromagnetic radiation, providing such tower's emission complies with applicable FCC emission standards.

23.06 Prohibitions. (1) No tower shall be over 300 feet in height.

(2) No tower may be installed on a parcel within a subdivision or any property with a Single Family Residential zoning designation, created for residential purposes or within an area designated for future residential development in an adopted town or County land use plan.

(3) No advertising message or sign shall be affixed to any tower .

(4) Towers shall be illuminated only as provided for by FCC and FAA regulations.

(5) No part of any tower, including guy-wires, shall extend across, over or into the setback of any right-of-way, public street, highway, sidewalk or other property beyond the siting parcel without written permission of the Zoning Administrator and that adjacent property owner(s). The setback provisions of Chapter 7, SCCO, are hereby expressly incorporated into this ordinance.

(6) No temporary mobile communication sites are permitted except in the case of equipment failure, equipment testing, equipment replacement or in the case of emergency situations. Placement of temporary equipment shall be limited to 90 days unless extended in writing by the Zoning Administrator.

23.07 District Requirements. (1) Agricultural, Exclusive-Agricultural, Commercial, Recreational-Commercial, Industrial, Resource Conservancy District-5 and Resource Conservancy District-35 zoning districts.

(a) The following are permitted with a land use permit from the Zoning Administrator issued under this chapter:

1. A new tower greater than 75 feet but less than 150 feet in height.

2. The modification to any structure such that any attached antenna does not extend more than 20 feet above the highest point of the preexisting tower or structure.

(b) The following are authorized with a special exception permit issued by the Sauk County Sauk County Board of Adjustment pursuant to Section 23.09(1)(b):

1. Attachments to existing towers or structures extending more than 20 feet above the highest point of the tower or structure, provided that the overall height of the tower or structure exceeds 75 feet.

2. Any new tower not otherwise covered, to a maximum of 300 feet.

(2) Single-Family Residential, Multiple-Family Residential and Wetland Districts.

(a) Siting of towers greater than 75 feet in height within these districts shall not be permitted.

(b) If this prohibition leads to areas which can not receive any wireless telecommunication service, an applicant may petition the Sauk County Board of Adjustment for a variance from this ordinance.

23.08 Performance Standards. (1) General. Except as provided in this ordinance, all wireless communication facilities shall meet the dimensional standards of the zoning district in which they are located. Where the facilities are the principal use on a separate parcel, the parcel shall meet the minimum lot size requirements of the respective zoning district. On a parcel of land that already has a principal use, the facilities shall be considered as an accessory use and a smaller area of land may be leased provided that all requirements of this chapter can be met.

(2) Setbacks and separation.

Generally, tower structures, including guy-wires, shall be set back from the nearest property line a distance of two (2) times the height of the tower; provided however, that the towers shall not be located within 500 feet of any residence other than the residence on the parcel on which the tower is to be located, and shall not be located within 1,000 feet of any single family dwelling in a platted subdivision. Setback reductions may be had by obtaining the written agreement of the adjacent property owner(s) and the Zoning Administrator, but shall not be reduced below the actual height of

the tower. The setback requirements contained in this subsection shall not apply to the replacement of an existing lawful tower with a height of seventy-five (75) feet or more on the same property as the existing tower. The existing tower must be completely removed from the site upon construction of the replacement tower and the replacement tower shall not exceed three-hundred (300) feet in height. The replacement tower shall comply with all other provisions of this ordinance.

(3) Collocation/sharing of facilities.

(a) No new tower shall be permitted unless the applicant demonstrates by reasonable and credible evidence that no existing tower or structure can accommodate the applicant's proposed antenna. Supporting evidence may consist of any of the following conditions:

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

2. Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements, and modification of existing towers or structures can not be made at a reasonable cost.

3. Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment, and modification of existing towers or structures can not be made at a reasonable cost.

4. The applicant's proposed system would cause electromagnetic interference with the system on the existing tower or structure, or the system on the existing tower or structure would cause interference with the applicant's proposed system, and the interference can not be eliminated at a reasonable cost.

5. The fees, cost or contractual provisions required by the owner to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable.

6. The applicant demonstrates that there are other limiting factors that render existing towers or structures unsuitable.

7. Costs are considered reasonable if they conform to contractual terms standard in the industry and do not exceed the cost of new tower development by more than twenty-five percent (25%).

(b) New commercial towers shall be designed structurally and electrically to

accommodate the applicant's antennas and comparable antennas for at least three (3) additional users. Towers must also be designed to allow for future rearrangement of antennas on the tower and accept antennas mounted at different heights.

(c) The holder of a permit for a tower shall not make access to the tower and tower site for the additional users economically unfeasible. If additional user(s) demonstrate (through an independent arbitrator or other pertinent means, with the cost to be shared by the holder of the permit and the proposed additional user) that the holder of a tower permit has made access to such tower and tower site economically unfeasible, then the permit shall become null and void.

(d) County and local governmental agencies shall have the right to reserve sites upon any new tower or upon any tower being substantially modified. Reservation of the accommodation upon the structure shall be acquired during the permit approval process. The governmental agency shall promptly utilize the reserved space, negotiate a delay in the use of the reserved space, or surrender such space back to the tower owner/operator.

(4) Screening and landscaping. (a) The tower and facility location shall provide for the maximum amount of natural screening as possible. The site shall be landscaped and maintained with a buffer of plant materials that effectively screens the view of all tower accessory structures, guy-wire anchors, equipment and other improvements at ground level.

(b) If the tower facility is in a wooded area, a natural vegetated buffer strip of undisturbed trees shall be retained for at least one hundred feet (100') in depth, and at least six feet (6') in height, around the perimeter of the tower facility. The area should remain undisturbed in appearance, except where minimally necessary to allow for an access drive.

(c) If the tower facility is not in a naturally wooded area, a vegetated barrier at least four feet (4') in depth and at least six feet (6') in height, shall be planted around the perimeter of the facility. The area should be made to appear as natural and undisturbed, preserving natural vegetation as much as possible.

(d) If the tower facility is located in an area that is under cultivation during the growing

season, the planting of additional screening vegetation is not required. The intent of this subsection is to allow for the maximum use of productive farmland.

(e) In locations where the visual impact of the tower would be minimal, or where the requirements of this section are otherwise impracticable, the landscaping and screening requirements of this section may be reduced or waived by the Zoning Administrator. Existing mature vegetation and natural landforms on the site shall be preserved to the maximum extent possible, or replaced to present a natural, undisturbed appearance in keeping with the intent of this section.

(5) Security fencing, lighting and signs.

(a) All towers shall be reasonably protected against unauthorized access. The bottom of the tower from ground level to 12 feet above ground shall be designed to preclude unauthorized climbing or access to the tower or structure. A chain link security fence of no less than six (6) feet in height surrounding the tower or structure is required to prevent unauthorized access. This requirement may be waived if anti-climbing devices or equipment is placed on the tower or structure that completely precludes unauthorized access. Such waiver shall be in writing and issued by the Zoning Administrator.

(b) Security lighting for on-ground facilities and equipment is permitted, as long as it is down shielded to keep light within the boundaries of the site.

(c) Signs shall be displayed on or adjacent to the tower or structure prohibiting entry without authorization, warning of the danger from electrical equipment and/or unauthorized climbing of the tower, and identifying the owner of the tower and telephone number for 24 hour contact in case of emergency.

(6) Color and materials.

(a) All towers, antennas and accessory structures shall use building materials, colors, textures, screening and landscaping that blend the facilities with the surrounding natural features and built environment to the greatest extent possible. The tower shall be a color that minimizes visibility or as required by FCC or FAA regulations.

(b) All metal towers shall be constructed or treated with corrosion resistant material.

(7) Parking and access. Adequate parking spaces shall be provided on each site so that parking on public road right-of-way will not be necessary. Additional parking may be required by the Zoning Administrator if the minimum parking proves to be inadequate. Access must be provided by a gated, all-weather gravel or paved driveway.

(8) Operators of communication facilities governed pursuant to this ordinance shall be required to submit to the Department of Planning and Zoning accurate copies of all pertinent licensing or certification documentation from or required by federal or state licensing authorities, which are required for said operators to said tower or facility. This shall be provided on an annual basis or as provided to the licensing authority, and shall include all monitoring reports required by the FCC.

23.09 Permit Requirements. (1) The construction or installation of any wireless communication facility requires the issuance of a land use permit or special exception permit under this ordinance.

(a) Land use permit. Land use permits may be obtained from the Zoning Administrator or designated representative of the Planning and Zoning Department.

(b) Special exception permits. Uses and facilities requiring a special exception permit under this chapter may be authorized by the Sauk County Board of Adjustment upon the submittal and approval of a properly completed application for a special exception permit under this section and Chapter 7 of the SCCO.

(2) Applications. Applications for land use permits or special exception permits for new wireless communication facilities shall include the following information:

(a) A report stamped and signed by a professional engineer registered in the State of Wisconsin which:

1. Certifies that a detailed engineering soils report has been completed and that the design of the tower foundation is based on that report.

2. Describes the tower height and design, including a cross section elevation and foundation design.

3. Certifies the facility's compliance with structural and electrical standards.

4. Describes the tower's capacity, including the potential number and type of antennas that can be accommodated, and the type of equipment proposed to be used on the tower.

5. Identifies the location of all sites that were considered as possible alternates to the site being applied for.

6. Describes the lighting and/or painting to be placed on the tower .

7. Certifies that the applicant or tenant has a valid license from the FCC to operate the proposed facilities, and identifies both the class of the license and the license holder.

8. Describes how the requirements and standards of this chapter will be met by the proposed facilities.

(b) Each application shall include a facility plan. The County will maintain an inventory of all existing and proposed wireless communication site installations and all providers shall provide the following information in each plan. The plan must be updated with each submittal as necessary.

1. Written description of the type of consumer services each provider will provide to its customers (cellular, PCS, SMR, ESMR, paging or other anticipated wireless communication services).

2. Provide a list of all existing sites, existing sites to be upgraded or replaced and proposed telecommunication sites within the County for these services to be provided by the provider. The intent of this requirement is to obtain the provider's current five-year plan for providing service within the County.

3. Provide a map which shows the geographic service areas of the existing and proposed telecommunications sites in the County and the nearest sites in adjacent counties.

(c) Landowner acknowledgment. Written acknowledgment by the landowner of a leased site that he/she will abide by all applicable terms and conditions of the land use permit or special exception permit, including the restoration and reclamation requirements of this chapter. Such

acknowledgment shall be made applicable to all successors, heirs and assignees.

(d) Additional information and analysis.

1. The Zoning Administrator or Sauk County Board of Adjustment may, at his/her or its discretion, require visual impact demonstrations, including mock-ups and/or photo montages, screening and painting plans, network maps, alternative site analysis, lists of other nearby wireless communication facilities, or facility design alternatives for the proposed facilities.

2. The Zoning Administrator or Sauk County Board of Adjustment may employ, on behalf of the County, an independent technical expert to review technical materials submitted by the applicant or to prepare any technical materials required but not submitted by the applicant. The applicant shall pay the reasonable costs of such review and/or independent analysis. The applicant may provide a list of consultants for the Board of Adjustment's consideration, but the Sauk County Board of Adjustment is not thereby required to use any consultant from that list.

(3) Denial of an application for a permit shall be in writing and shall be supported by substantial evidence in a written record prepared by the appropriate permit approval authority.

(4) The applicant may be required to provide detailed engineering documentation or pay for an independent evaluation of the proposed tower facility to assist the Board of Adjustment in the evaluation of an application for a proposed facility or to show the existence of a hardship, to a preponderance of the evidence standard.

23.10 Transferability. All permits issued under this chapter shall be transferable, and all subsequent holders of such permits shall be subject to all applicable requirements of this chapter and any permit conditions that may exist. Written notice shall be made to the Zoning Administrator within 30 days of such transfer.

23.11 Appeals. Appeals to the Sauk County Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of Sauk County affected by any decision of the Zoning Administrator as provided for by Chapter 7, SCCO.

23.12 Severability. If any portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

23.13 Enforcement and Penalties. (1) The provisions of this chapter shall be enforced under the direction of the Sauk County Board of Supervisors, through the Planning and Zoning and Land Records Committee, the Planning and Zoning Department and County law enforcement officers. The Sauk County Corporation Counsel is authorized to commence legal action to enforce the terms of this ordinance. Any person, firm, company or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this chapter shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by forfeiture as set forth in Chapter 20, Sauk County Code of Ordinances. Each day of violation shall constitute a separate offense.

(2) Compliance with this ordinance may also be enforced by injunctive order at the suit of the County or the owner or owners of land affected by the provisions of this chapter.

(3) The Zoning Administrator or his or her designee may enter property at any reasonable time to conduct inspections to determine if all provisions of this chapter have been met.

As adopted by the Sauk County Board of Supervisors on July 20, 1999, by Ordinance 115-99. Amended Section 23.03 by Ordinance 209-99, passed by the Sauk County Board of Supervisors on December 21, 1999. Sections 23.04 and 23.08 amended by the Sauk County Board of Supervisors on February 14, 2000 - Ordinance No. 19-00. Section 23.08(2) amended by the Sauk County Board of Supervisors on July 15, 2003 - Ordinance No. 106-03.