

## SECTION 13.0 WIRELESS COMMUNICATIONS FACILITIES.

13.1 Statement of Purpose and Intent. The purpose of this ordinance is to provide standards and criteria for the placement, construction and maintenance of wireless communication facilities in the Town of Newark. The intent of this ordinance is to:

- (1) Strike a balance between the interests of the wireless communications service providers, the consumers of those services and the Town of Newark.
- (2) Restrict the location of towers to nonresidential areas and minimize the total number of towers throughout the Town.
- (3) Protect residential areas and land uses from potential adverse impact of towers and antennas.
- (4) Encourage co-location of new antennas on existing towers.
- (5) Encourage users of towers and antennas to locate them, to maximum extent possible, in areas where the adverse impact on the township is minimal.
- (6) Encourage users of towers and antennas to configure them in a way that minimizes their adverse visual impact by careful design, siting, landscaping, screening and camouflaging techniques.
- (7) Protect property values and the public health, safety and welfare.
- (8) Avoid potential damage to adjacent properties from tower failure through careful engineering and siting of tower structures.
- (9) Enable wireless communication service providers to provide their services to the township in a prompt, effective and efficient manner.
- (10) Create clear and objective approval criteria.
- (11) Ensure that all wireless communication providers are given an equal opportunity to compete in the local market.

13.2 Definitions. When used in this chapter, the following words and phrases shall have the meanings indicated:

- (1) Alternative Tower Structure: An existing man-made structure which is used as an alternative to a tower and to which an antenna and/or an antenna support structure is attached.
- (2) Antenna: An outdoor apparatus designed to send or receive wireless communications.
- (3) Antenna Support Structure: A structure which is attached to an alternative tower structure and which is designed to support an antenna at a height sufficient to permit effective receipt or transmission of wireless communications.
- (4) Co-location: The location of more than one (1) antenna on a single tower or alternative tower structure.
- (5) Equipment Facility: A building, cabinet, or other enclosure used to house and protect the electronic equipment necessary for processing wireless communications at a wireless communications facility.
- (6) FAA: Federal Aviation Administration.
- (7) FCC: Federal Communications Commission.
- (8) Governing Authority: The Town of Newark.
- (9) Height: The distance from the ground at the base of the tower, or alternative tower structure, to the highest point of the tower or any fixture attached to it, whichever is highest.
- (10) Operator: A person, corporation, partnership, association, or other organization which:
  - (a) Provides wireless communication services, either directly or through one or more agents, employees, subsidiaries, or affiliates.
  - (b) Controls or is responsible for the management and operation of a wireless communications facility.
- (11) Points of Visual Interest Views of waterways, open spaces, historic buildings, architecturally significant structures or other scenic views.

- (12) Pre-Existing Towers and Antennas: Any tower or antenna for which a building permit or condition use permit had been properly issued prior to the effective date of this chapter.
- (13) Tower: A freestanding, self-supporting structure which rests upon or is embedded into the ground and that is designed and constructed primarily for the purpose of supporting wireless communication antennas. "Tower" does include structures supported by anchored guy wires.
- (14) Tower Sites: The parcel of land where a tower and associated wireless communication structures, fixtures, and equipment are located.
- (15) Wireless communications facility: All of the wireless communication devices located at a single wireless communication site. The term "wireless communications" is synonymous with the terms "telecommunications facility" and "communications facility".
- (16) Wireless Communications Service: The provision of wireless communication services for a consideration. The Wireless communication services include, but are not limited to, Cellular Communications Service (CCS), Personal Communication Service (PCS), Specialized Mobile Radio Service (SMR), Enhanced Specialized Mobile Radio (ESMR), paging services and other similar Wireless Communication Services. Telecommunications service does not include wireless over the air broadcasts to the public at large or citizen band radio broadcasts.

### 13.3 Applicability of Regulations.

- (1) Facilities Regulated by this Chapter: Except as provided in subsection (2)(a) of this section, the regulations contained in this chapter shall apply to all wireless communication facilities in the Town of Newark.
- (2) Facilities Exempt from Other Provisions of this Chapter.
  - (A) List of Exempt facilities: The following wireless communication facilities are exempt from the provisions of this chapter, except the regulations contained in subparagraph (b) of this subsection.
    - 1. A single ground or building mounted receive-only radio or television antenna including any mast, for

the sole use of the occupant of a residential parcel on which the radio or television antenna is located; within an antenna height not exceeding 50 feet.

2. A ground or building mounted receive-only radio or television satellite dish antenna, which does exceed eight feet (8) in diameter, for the sole use of the occupant of a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the roof line of the primary structure on said parcel.
3. Microwave dishes for private home use.
4. Citizens band radio antenna or antenna operated by an amateur radio operator licensed by the FCC which existed at the time of the adoption of this chapter or a new tower which does not exceed 75' in height.
5. Mobile communication services providing public information or coverage of news events of a temporary nature.
6. Hand-held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices.
7. Governmentally owned and operated receive and/or transmit telemetry station antenna for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, with heights not exceeding 50'.
8. Antennae and equipment and other apparatus completely located within an existing structure whose purpose is to enhance or facilitate communication functions of other structures on the site.
9. Towers and antennas that existed prior to the enactment of this chapter.

- (B) Regulation of Exempt Facilities: Notwithstanding subparagraph (1) of this section, exempt facilities shall be subject to the following rules and regulations:

1. In residential districts:
  - a. There shall be no more than one (1) antenna support structure per tax parcel.
  - b. Satellite dishes shall not exceed 8 feet in diameter.
2. Exempt towers shall be designed to prevent children and other trespassers from climbing on the structure. Ladder rungs shall be at least 20 feet above the ground immediately below.
3. The tower and antenna shall be constructed and maintained in accordance with the provisions of sections 13.4 and 13.7 of this chapter.

- (C) Other Codes Apply: Notwithstanding the provisions of subsection (2)(a) of this section, towers and antennas constructed and maintained in the Town of Newark shall comply with all other applicable local, state and federal laws.

#### 13.4 Building Permits:

- (1) Building Permit Required: No person shall construct, install or alter any wireless communication facility including any equipment facility or other associated structures in the Town of Newark without first obtaining a building permit.
- (2) Application for Building Permit:
  - (a) Form and Contents: The application for a building permit shall be made on a form prescribed by the Building Inspector. The application for a building permit will not be considered until the application is full completed and signed by the applicant. When completed the application shall be filed with the Building Inspector.
  - (b) Approval by Landowner: If the applicant for a permit to build a wireless communication facility is the owner of the land, the applicant should so indicate. If the applicant is not the owner of the land upon which the communication

facility will be erected, the owner of the land shall sign the application form along with the applicant. The application shall provide proof of ownership at the time the application is filed.

- (3) Building Permit Fees: The fees for the tower, antenna support structure, antennas, buildings and equipment will be set forth on a schedule on file in the office of the Town Clerk.
- (4) Conditions Precedent to Issuance of the Building Permit:
  - (a) Compliance With Zoning Regulations: No building permit shall be issued for a wireless communication facility unless such facility is permitted by the zoning code or unless a conditional use permit is issued pursuant to that code.
  - (b) Conditional Use Permit: No building permit shall be issued for a wireless communication facility for which a conditional use permit is required until such conditional use permit has been issued.
  - (c) General Requirements: No building permit shall be issued to the applicant until each of the following requirements has been met:
    - (1) Plans Specifications and Statements: The applicant for a permit to construct a new tower or equipment facility shall provide the following to the Clerk.
      - (a) Wisconsin Professional Engineer stamped plans and Specifications for construction of the tower.
      - (b) A written statement by an electrical engineer licensed to practice in the State of Wisconsin that the reception and transmission functions of the proposed tower, antenna or equipment facility will not interfere with the usual and customary transmission and reception of radio, television or other services on adjacent properties.
      - (c) A copy of the FAA determination, the FCC license and the State of Wisconsin Department of Commerce building plan

approval indicating that the proposed tower, antenna or equipment facility complies with rules administered by those agencies.

- (d) For towers, a written statement from the applicant's engineer licensed in the State of Wisconsin indicating:
  - (i) The types of antennas that may be accommodated by the tower;
  - (ii) The tower's capacity for such antennas;
  - (iii) The failure characteristics of the tower; and
  - (iv) The adequacy of its setback in the event of failure.
- (2) Site and Landscape Plans: The applicant shall provide the Building Inspector with site plans and landscape plans drawn to one inch scale of one inch=20 feet. Those plans should specify the location of any tower, building, parking, landscaping, fencing and other accessory uses. The landscape plans shall indicate the size, spacing and type of plantings for the proposed site.
- (3) List of Other Antenna Facilities: The applicant shall provide the Clerk with a list of the applicant's existing towers and antennas located within the Town of Newark. The list should identify the location, height and design of each tower and location of each antenna. The Building Inspector may share such information with other applicants applying for a building permit to construct, install or alter wireless communication facilities.
- (4) Affidavit Regarding Other Towers. The applicant for a permit to construct a new tower shall execute an affidavit stating whether any other wireless communication tower is located within a radius of 1 mile from the location of the proposed new tower.
- (5) Co-Location Statement for Towers: The applicant shall demonstrate to the reasonable satisfaction of the Building Inspector, that no existing tower or alternative tower structure can accommodate the

applicant's proposed antenna. Upon a showing that any one of the following circumstances exists, the applicant shall be deemed to have satisfactorily demonstrated the need for a new tower:

- (a) No tower or alternative tower structure exists in a geographic area where it is necessary to place an antenna in order to provide effective wireless communication services.
- (b) Existing towers or alternative tower structures are not of sufficient height to meet applicant's engineering requirements.
- (c) Existing towers or alternative tower structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (d) Applicant's proposed antenna would cause interference with another antenna already located on an existing tower or structure would cause interference with applicant's proposed structure.
- (e) The charges for use of an existing tower or alternative tower structure are unreasonable. Charges for use of an existing tower or structure shall be deemed unreasonable if those charges exceed the cost of constructing a wireless communication facility or the costs of constructing such facility cannot be recaptured over a period of five (5) years.
- (f) The applicant demonstrates that there are other factors that render an existing tower or alternative tower structure unsuitable.

### 13.5 Other Requirements:

#### (1) Height:

- (a) Towers: No tower shall exceed 200 feet in height.

- (b) Antenna Support Structure:
- (1) General Rule: Except as provided in subparagraph (2), no antenna support structure, including any antenna or other device attached thereto, shall extend more than 15 feet above the highest point of the building or structure to which the antenna support structure is attached.
  - (2) Exception: An antenna support structure, including any antenna or other device attached thereto, may extend to a height of 70 feet, if the antenna support structure is located on the roof of a commercial industrial, professional or institutional building, and:
    - (a) The building is not altered to accommodate the alternative support structure; and
    - (b) The alternative support structure complies with all applicable local, state, and federal laws, rules and regulations.
- (2) Advertising Signs Prohibited: No person shall place any advertising sign on any tower, antenna support structure or antenna. Nor shall anyone place any flag, decorative sign, streamer, pennant, ribbon, spinner or other moving object on a tower, antenna support structure or antenna.
- (3) Lighting: No tower, antenna support structure or antenna shall be artificially illuminated, unless such lighting is required by local, state, or federal law. This subsection does not prohibit the use of motion detectors and associated lighting or the use of outdoor lights when the wireless communication provider's personnel are present. This subsection is not intended to prohibit any lighting required by any local, state, or federal law, rule of regulation. If lighting is required by such law, rule of regulation. If lighting is required by such law, rule of regulation, the operator and owner shall choose the lighting which causes the least disturbance to the occupants of adjacent properties.
- (4) Traffic. Traffic that is associated with the wireless communication facility shall not adversely affect abutting streets or neighboring properties.
- (5) Setbacks: All towers and wireless communication facilities shall be subject to the same set back, yard, lot, width and lot area requirements as other structures located in the towers, or wireless communication facilities Zoning District.

- (6) Tower Separation: No new tower shall be constructed within 1 mile of an existing tower unless a conditional use permit is granted. The distance shall be measured in a straight line between the base of the existing tower and the proposed location for the base of the new tower.
- (7) Tower Color: The tower shall have galvanized steel finish or shall be painted in a neutral color so as to reduce visual obtrusiveness or to camouflage the tower, unless such a color is required by local, state, or federal law, rule or regulation. Antennas and antenna support structures shall be neutral color which is identical to, or closely compatible with the color of the tower or alternative support structure.
- (8) Ladders: Ladder rungs on towers shall not be placed within 20 feet of the ground.
- (9) Fencing: A wireless communication facility shall be enclosed by a security fence not less than 8 feet in height and secured so that it is not accessible by the general public. Fence design, materials, and colors shall reflect the character of the surrounding area as determined by the Town Board.
- (10) Landscaping: A buffer of plant materials to effectively screen the site from public view and from adjacent properties shall be provided.
  - (a) The minimum buffer shall consist of a landscaped strip at least 5 feet in width outside the perimeter of the wireless communications facility.
  - (b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
  - (c) Existing mature tree growth and natural land forms shall be preserved to the maximum extent possible. In some cases, such towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
  - (d) All landscaping requirements detailed here shall be properly maintained for the life of the conditional use permit or while the tower is present.
- (11) Buildings, Enclosures, and other Associated Devices:
  - (a) Location: All buildings, enclosures, equipment and other associated devices shall be placed in close proximity to the base of the tower located on the wireless communications site. If the wireless communications facility does not have a tower, the buildings, equipment and other associated devices shall be placed

in close proximity to the alternative tower structure. If the wireless communication facility has a roof mounted antenna support structure, an equipment enclosure may be located on the roof provided that such enclosure is placed as unobtrusively as possible and in compliance with all applicable building and zoning rules and regulations.

- (b) Security: All buildings and equipment enclosures shall be kept locked at all times. Each building and enclosure shall have a label attached to it. The label shall give the name, address, and telephone number of the person who should be contacted in the event of an emergency.

### 13.6 Annual Registration:

- (1) Facilities to be Registered: The owner or operator of a wireless communication facility shall obtain an annual registration for the operation of each wireless communication facility and addition located in the Town of Newark.
- (2) Application for Registration:
  - (a) Form and Contents: The owner or operator of a wireless communication facility shall complete an application for registration on a form prescribed by the Clerk. The application form shall be signed by the owner or operator of the wireless communication facility and by the owner of the property on which the facility is located. The application form shall be submitted to the Clerk together with a receipt for payment of the applicable registration fee. The application shall pay the registration fee to the Town Clerk.
  - (b) Issuance of a Registration Certificate: Upon receipt of a fully completed application and proof of payment of the registration fee, the Clerk shall issue a registration certificate to the owner or operator of the wireless communication facility. Issuance of the registration certificate is subject to review and approval by the Building Inspector for compliance with all provisions of the ordinance as well as all applicable state and federal regulations.
  - (c) Registration: The registration certificate shall be issued annually for the period beginning January 1 and ending December 31. Registration certificates may be prorated on a monthly basis.
  - (d) Registration Fees: The annual registration fee for the tower, antenna support structures, antennas, equipment facilities and

associated equipment and devices are as set forth on the schedule on file in the office of the Town Clerk.

- (e) Suspension, Revocation/Refusal to Renew Registration: The Town Board may suspend, revoke or refuse to renew a registration certificate issued pursuant to this section for failure to comply with any of the provisions of this ordinance, including any specific requirements of the Town Board in connection with issuance of a Conditional use Permit.
- (f) Appeal: Any person aggrieved by a decision of the Town Board to suspend, revoke or refuse renewal of a registration certificate may appeal that decision by Writ of Certiorari to the Circuit Court for Rock County.

### 13.7 Maintenance and Operational Requirements:

- (1) General Requirements: The wireless communication facility shall be maintained in accordance with all applicable local, state, and federal regulations. Access to the wireless communication facility shall be properly maintained for emergency personnel in the form of maintained roadways. If the Building Inspector concludes that a tower or any part of a wireless communication facility fails to comply with such codes and constitutes a danger to persons or property in the vicinity, the Building Inspector shall notify the owner or operator of the wireless communication facility of such fact. The notice shall be in writing and shall require the owner or operator to bring the facility into compliance with such codes within 30 days of the date of the service notice. If the owner or operator fails to bring the wireless communication facility into compliance within the time provided, the Town's Building Inspector may order the tower or other wireless communications facility removed to the extent necessary to protect persons or property in the vicinity. The cost of removing the tower or other portion of the wireless communication facility shall be at the owner's expense. The owner and operator shall be responsible to maintain the premises upon which the wireless communication facility is located in a clean and sanitary condition.
- (2) Outdoor Storage Prohibited: No person shall store any vehicles, equipment or other goods on the wireless communications facility except in an enclosed building. This section does not apply to overnight storage of vehicles or equipment necessary for the repair of the wireless communication facility.
- (3) Hours of Operation: Non-emergency maintenance and service visits to the wireless communication facility are limited to regular business hours (7:00 a.m. to 6:00 p.m., Monday through Friday). Emergency repairs necessary

to keep the wireless communication service in operation may be performed 24 hours a day, 7 days a week.

13.8 Abandoned Towers and Antennas:

- (1) Evidence of Abandonment: An antenna or tower shall be deemed abandoned if any of the following shall occur:
  - (a) The antenna or tower is not operated for six (6) continuous months.
  - (b) The owner or operator has notified the Town of Newark that it has ceased operations of the antenna tower.
- (2) Notification of Abandonment: The owner or operator of a wireless communication facility shall notify the Town Clerk whenever an antenna or tower is abandoned or its use discontinued. Such notice shall be given to the Clerk within thirty (30) days of such abandonment or discontinuance.
- (3) Removal of Abandoned Towers and Antennas: The owner and operator of an abandoned tower or antenna shall remove it from the wireless communications facility within six (6) months after the tower or antenna is abandoned or its use discontinued; If the owner fails to remove the antenna or tower at the owner's and operator's expense. In the event that the cost of removal is not paid, the Town may assess the cost of such removal against the property upon which the wireless communication facility is located as a special charge pursuant to Wis. Stat. 66.0627.
- (4) Site Restoration: Whenever a tower is removed from a wireless communication facility, the remainder of the site shall be restored to its preexisting condition and all buildings, equipment and other devices accessory to the tower shall be removed from the site.