

35.00

**ARTICLE XXXV
TELECOMMUNICATIONS TOWERS**

AN AMENDMENT TO THE WHITEWATER TOWNSHIP ZONING ORDINANCE #6, ADDING ARTICLE XXXV, ENTITLED "WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS"; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING CONDITIONS FOR PERMITTED USES, ACCESSORY USES, AND SPECIAL USES; PROVIDING FOR PERMITS AND LEASE AGREEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Township of Whitewater has received or expects to receive, requests to site wireless communications towers and antennas within the municipal boundaries; and

WHEREAS, the Township of Whitewater finds that it is in the public interest to permit the siting of wireless communications towers and antennas within the municipal boundaries, and

WHEREAS, it is the intent of the Township of Whitewater to permit the siting of wireless communications towers and antennas within the municipal boundaries; and

WHEREAS, it is the intent of the Township of Whitewater to protect and promote the public health, safety and welfare by regulating the siting of wireless communications towers and antennas,

NOW, THEREFORE, BE IT ORDAINED BY THE WHITEWATER TOWNSHIP BOARD:

35.10:Intent & Purpose.

The purpose of this ordinance is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this ordinance are to: (1) protect residential areas and land uses from potential adverse impacts of towers and antennas; (2) encourage the location of towers in non-residential areas; (3) minimize the total number of towers throughout the community; (4) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; (5) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; (6) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques; (7) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently; (8) consider the public health and safety of communication towers; and (9) avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, Whitewater Township shall give due consideration to the Whitewater Township master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

(WHITEWATER TOWNSHIP ZONING ORDINANCE)

35.11: Definitions.

As used in this ordinance, the following terms shall have the meanings set forth below:

- A.** "Alternative tower structure" means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- B.** "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
- C.** "Backhaul network" means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.
- D.** "FAA" means the Federal Aviation Administration.
- E.** "FCC" means the Federal Communications Commission.
- F.** "Height" means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.
- G.** "Preexisting towers and preexisting antennas" means any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.
- H.** "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.
- I.** "Microcell" means the antenna cables and appurtenances necessary for cellular telecommunications.

35.12: Applicability.

- A. New Towers and Antennas. All new towers or antennas in Whitewater Township shall be subject to these regulations, except as provided in Sections 35.12(B) through (D).
- B. Amateur Radio Station Operators/Receive Only Antennas. This ordinance shall not govern any tower, or the installation of any antenna, that is under thirty five (35) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.
- C. Preexisting Towers or Antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this ordinance, other than the requirements of Sections 35(f) and 35(g).
- D. AM Array. For purposes of implementing this ordinance, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

35.13: General Requirements.

- A. Principal or Accessory Use. Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- B. Lot Size. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- C. Inventory of Existing Sites. Each applicant for an antenna and/or tower shall provide to the Zoning Administrator an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of Whitewater Township or within one mile of the border thereof, including specific information about the location, height, and design of each tower. The Zoning Administrator may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of Whitewater Township provided, however that the Zoning Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- D. Aesthetics. Towers and antennas shall meet the following requirements:
 - 1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
 3. 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.
- E.** Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- F.** State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- G.** Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Township of Whitewater concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- H.** Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in Whitewater Township irrespective of municipal and county jurisdictional boundaries.
- I.** Not Essential Services. Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

- J. Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in Whitewater Township have been obtained and shall file a copy of all required franchises with the Zoning Administrator.
- K. Public Notice. For purposes of this ordinance, any special use request, variance request, or appeal of an administratively approved use or special use shall require public notice to all abutting property owners and all property owners of properties that are located within the corresponding separation distance listed in Section 32.15(B)(5)(b) Table 2, in addition to any notice otherwise required by the Zoning Ordinance.
- L. Signs. No signs shall be allowed on an antenna or tower.
- M. Buildings and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of Section 35.16.
- N. Multiple Antenna/Tower Plan. Whitewater Township encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

35.14: Permitted Uses.

- A. General. The uses listed in this Section are deemed to be permitted uses and shall not require a special use permit.
- B. Permitted Uses. The following uses are specifically permitted:
 - 1. Antennas or towers located on property owned, leased, or otherwise controlled by Whitewater Township provided a license or lease authorizing such antenna or tower has been approved by Whitewater Township.

35.15: Special Use Permits.

- A. General. The following provisions shall govern the issuance of special use permits for towers or antennas by the Planning Commission:
 - 1. If the tower or antenna is not a permitted use under Section 35.14 of this ordinance, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.
 - 2. Applications for special use permits under this Section shall be subject to the procedures and requirements of Article XXV [Article on special uses] of the Zoning Ordinance, except as modified in this Section.
 - 3. In granting a special use permit, the Planning Commission may impose conditions to the extent the Planning Commission concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

4. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
5. An applicant for a special use permit shall submit the information described in this Section and a non-refundable fee as established by the Whitewater Township Board, as well as any additional fees which may be required should outside professional assistance be required in the review of the application, to reimburse Whitewater Township for the costs of reviewing the application.

B. Towers.

1. Information required. In addition to any information required for applications for special use permits pursuant to Article XXV [Article on special uses] of the Zoning Ordinance, applicants for a special use permit for a tower shall submit the following information:
 - a. A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), Master Plan classification of the site and all properties within the applicable separation distances set forth in Section 32.15(B)(4), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the Zoning Administrator to be necessary to assess compliance with this ordinance.
 - b. Legal description of the parent tract and leased parcel (if applicable).
 - c. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
 - d. The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 35.13(C) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - e. A landscape plan showing specific landscape materials.
 - f. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

- g.** A description of compliance with Sections 35.03(C), (D), (E), (F), (G), (J), (L), and (M), 35.15(B)(4), 35.15(B)(5) and all applicable federal, state or local laws.
 - h.** A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
 - i.** Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
 - j.** A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
 - k.** A description of the feasible location(s) of future towers or antennas within the Township of Whitewater based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- 2.** Factors Considered in Granting Special Use Permits for Towers. In addition to any standards for consideration of special use permit applications pursuant to Article XXV [Article on special uses] of the Zoning Ordinance, the Planning Commission shall consider the following factors in determining whether to issue a special use permit, although the Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Planning Commission concludes that the goals of this ordinance are better served thereby:
 - a.** Height of the proposed tower;
 - b.** Proximity of the tower to residential structures and residential district boundaries;
 - c.** Nature of uses on adjacent and nearby properties;
 - d.** Surrounding topography;
 - e.** Surrounding tree coverage and foliage;
 - f.** Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - g.** Proposed ingress and egress; and

- 4.** Setbacks. The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the Planning Commission may reduce the standard setback requirements if the goals of this ordinance would be better served thereby:

 - a.** Towers must be set back a distance equal to at least seventy-five percent (75%) of the height of the tower from any adjoining lot line.
 - b.** Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

- 5.** Separation. The following separation requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the Planning Commission may reduce the standard separation requirements if the goals of this ordinance would be better served thereby.

 - a.** Separation from off-site uses/designated areas.

 - (1)** Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
 - (2)** Separation requirements for towers shall comply with the minimum standards established in Table 1.

Table 1:

| Off-site Use/Designated Area | Separation Distance |
|---|--|
| Single-family or duplex residential units ¹ | 200 feet or 300% height of tower whichever is greater |
| Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired | 200 feet or 300% height of tower ² whichever is greater |
| Vacant unplatted residentially zoned lands ³ | 100 feet or 100% height of tower whichever is greater |
| Existing multi-family residential units greater than duplex units | 100 feet or 100% height of tower whichever is greater |
| Non-residentially zoned lands or non-residential uses | None; only setbacks apply |

¹Includes modular homes and mobile homes used for living purposes.

²Separation measured from base of tower to closest building setback line.

³Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex.

A. Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

B. Table 2: Existing tower types, all measurements are in feet. (next page)

Table 2.

| | Lattice | Guyed | Monopole 75 feet or Higher | Monopole less than 75 feet |
|----------------------------|---------|-------|----------------------------|----------------------------|
| Lattice | 5,000 | 5,000 | 1,500 | 750 |
| Guyed | 5,000 | 5,000 | 1,500 | 750 |
| Monopole 75 feet or higher | 1,500 | 1,500 | 1,500 | 750 |
| Monopole less than 75 feet | 750 | 750 | 750 | 750 |

A. Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Planning Commission may waive such requirements, as it deems appropriate.

B. Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the Planning Commission may waive such requirements if the goals of this ordinance would be better served thereby.

1. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
2. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived
3. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

35.16: Buildings or Other Equipment Storage.

- A. Antennas Mounted on Structures or Rooftops.** The equipment cabinet or structure used in association with antennas shall comply with the following:
1. The cabinet or structure shall not contain more than one hundred (100) square feet of gross floor area or be more than thirty five (35) feet in height. In addition, for buildings and structures which are less than thirty five (35) feet in height, the related unmanned equipment structure, if over one hundred (100) square feet of gross floor area or thirty five (35) feet in height, shall be located on the ground and shall not be located on the roof of the structure.
 2. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than ten (10) percent of the roof area.
 3. Equipment storage buildings or cabinets shall comply with all applicable building codes.
- B. Antennas Mounted on Utility Poles or Light Poles.** The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
1. In residential districts, the equipment cabinet or structure may be located:
 - (a) In a front or side yard provided the cabinet or structure is no greater than ten (10) feet in height and one hundred, seventy six (176) of gross floor area and the cabinet/structure shall comply with all setback requirements within the specific zone. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least 42-48 inches and a planted height of at least 36 inches.
 - (b) In a rear yard, provided the cabinet or structure is no greater than ten (10) feet in height and one hundred, seventy six (176) square feet in gross floor area. The cabinet/structure shall comply with all setback requirements within the specific zone and be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.
 2. In commercial or industrial districts the equipment cabinet or structure shall be no greater than ten (10) feet in height and one hundred, seventy six (176) square feet in gross floor area. The structure or cabinet shall comply with all setback requirements within the specific zone and be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence six (6) feet in height or an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.
- C. Antennas Located on Towers.** The related unmanned equipment structure shall not contain more than ten (10) square feet of gross floor area and be more than ten (10) feet in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which located.

- D. Modification of Building Size Requirements. The requirements of Sections 35.16 (A) through (C) may be modified by the Planning Commission in the case of uses permitted by special use to encourage collocation.

35.17: Removal of Abandoned Antennas and Towers.

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the Township of Whitewater notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) day shall be grounds to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower. A performance guarantee may be required in order to effectuate the terms and conditions of this ordinance.

35.18: Nonconforming Uses.

- A. Not Expansion of Nonconforming Use. 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.
- B. Preexisting towers. Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this ordinance.
- C. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding Section 32.17, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the separation requirements specified in Sections 35.15(B)(4) AND 35.15(B)(5). The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 35.17.

35.19: Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 35.20: Repealer.

Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 35.21: Effective Date.

This Ordinance shall take effect October 6, 1997.