

SECTION 24: TELECOMMUNICATION TOWERS AND FACILITIES

WHEREAS, on February 8, 1996, Congress enacted the federal Telecommunications Act of 1996, P.L. No. 104-104, to deregulate the telecommunications industry, providing a more competitive environment for wired and wireless telecommunication services in the United States;

WHEREAS, effects of increased competition in the market for wireless telecommunication services is an increased demand for antenna sites on telecommunication towers and antenna support structures necessary for providing wireless service via existing and new technologies;

WHEREAS, the Telecommunications Act of 1996 preserves the authority of the County to regulate the placement, construction, and modification of towers, antenna support structures, and welfare of the public;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY OF COTTONWOOD, MINNESOTA: That Section 23 of Zoning Ordinance # 28, entitled "Telecommunication Towers and Facilities" is hereby created to read as follows:

Subdivision 1. Findings.

The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over:

1. The regulation of the environmental effects of radio frequency emissions from telecommunication facilities.
2. The regulation of radio signal interference among users of the radio frequency spectrum.

The uncontrolled proliferation of telecommunication towers in the County could diminish property values, could be a source of aesthetic blight in the County and could otherwise threaten the health, safety and welfare of the public. Consistent with the Act, regulation of towers and telecommunication facilities in the County cannot have the effect of prohibiting any person from providing wireless telecommunication services in violation of the Act.

Subdivision 2: Purposes.

The general purpose of this Section is to regulate the placement, construction and modification of telecommunication towers and facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in Cottonwood County.

Specifically, the purposes of this Section are:

1. To regulate the location of telecommunication towers and facilities in the County;
2. To protect residential areas and land uses from potential adverse impacts of telecommunication towers and facilities;
3. To minimize adverse visual impacts of telecommunication towers and facilities through careful design,

- siting, landscaping, and innovative camouflaging techniques;
4. To promote and encourage shared use/co-location of telecommunication towers and antenna support structures as a primary option rather than construction of additional single-use towers;
 5. To avoid potential damage to adjacent properties caused by telecommunication towers and facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or determined to be structurally unsound;
 6. To ensure that telecommunication towers and facilities are compatible with surrounding land uses;
 7. To facilitate the provision of wireless telecommunication services to the residents and businesses of the County in an orderly fashion.

Subdivision 3: Definitions.

Antenna: Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.

Antenna support structure: Any building or other structure other than a tower which can be used for location of telecommunication facilities.

Applicant: Any person that applies for a telecommunication tower Conditional Use Permit and Setback Permit.

Application: The process by which the owner of a plot of land within the county submits a request to develop, construct, build, modify, or erect a telecommunication tower upon such land. Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by an applicant to the County concerning such a request.

Co-locate: To be located in the same place; to place together or to arrange; to place on same tower.

Commercial Wireless Telecommunication Services: Licensed commercial wireless telecommunication services, including cellular, personal communication services (PCS), specialized mobilized radio (SMR), Enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

Engineer: A structural engineer licensed by the State of Minnesota.

Existing Telecommunication Tower: Any telecommunication tower built prior to September 1, 1999.

Initial Loading Capacity: The weight and effect surface area of the applicant's telecommunication facility that will be installed on the applicant's telecommunication tower.

Owner: Any person with fee title or a long-term (exceeding 3 years) leasehold to any plot of land within the county who desires to develop, construct, build, modify, or erect a telecommunication tower upon such land.

Person: Any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Stealth: Any telecommunication tower or telecommunication facility which is designed to blend into the surrounding environment.

Telecommunication facilities: Any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, the term telecommunication facilities shall not include:

1. Any satellite earth station antenna two meters in diameter or less which is located in an area zoned industrial or commercial;
2. Any satellite earth station antenna one meter or less in diameter, regardless of zoning category.

Telecommunication Tower: Any ground or roof mounted pole, spire, self-supporting lattice, guyed or monopole structure, or combination thereof taller than 15', including support lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade. The term tower shall not include amateur radio operators' equipment, as licensed by the FCC.

- **Multi User:** A telecommunication tower to which is attached the antennas of more than one commercial wireless telecommunication service provider or governmental entity.
- **Single User:** A telecommunication tower to which is attached only the antennas of a single user, even though the tower may be designated to accommodate the antennas of multiple users as required in this code.

Subdivision 4: Development of Telecommunications Towers.

1. A telecommunication tower to be built, erected or constructed on a parcel of land shall be a conditional use of land in Cottonwood County. No person shall build, erect or construct a telecommunication tower upon any plot of land unless a County Setback Permit shall have been issued by the County Planning and Zoning Office. Application shall be made to the County Planning and Zoning Office in the manner provided in this Section.
2. In a Residential District a telecommunication tower shall be a conditional use of land.
3. The County may authorize the use of County property for the construction of a telecommunication tower in appropriately zoned districts in accordance with the procedures of the County and County Ordinance. The County shall have no obligation whatsoever to use county property for such purposes.
4. Telecommunication towers are prohibited on any property whose principal use includes the storage, distribution, or sale of volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, and corrosive or dangerous chemicals.
5. No new telecommunication tower shall be built, constructed or erected in the County unless such tower is capable of accommodating, at a future date, at least two (2) additional telecommunications facilities owned by other persons and the telecommunication tower owner agrees to comply with subdivision 9, "Existing Towers",
6. An application to develop a telecommunication tower shall include:
 - a.) The name, address, and telephone number of the owner and lessee of the parcel of land upon which the telecommunication tower is situated. If the applicant is not the owner of the parcel of land upon which the telecommunication tower is situated, the consent of the owner shall be obtained by sworn affidavit.

- b.) The legal description, parcel number, and address of the parcel of land upon which the telecommunication tower is situated.
 - c.) The names, addresses, and telephone numbers of all owners of other telecommunication towers or usable antenna support structures within a one (1) mile radius of the proposed new tower site, including County owned property.
 - d.) Written documentation that the applicant made diligent, but unsuccessful efforts for permission to install or co-locate the applicant's telecommunication facilities on other available antenna support structures located within a one (1) mile radius of the proposed telecommunication tower site.
 - e.) Written, technical evidence from an engineer(s) that the proposed telecommunication tower or telecommunication facilities cannot be installed or co-located on another person's tower or usable antenna support structure located within a one (1) mile radius of the proposed telecommunication tower site and must be located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system.
 - f.) Written, technical evidence from an engineer(s) that the proposed structure meets the standards set forth in Subdivision 6, "Structural Requirements" of this code.
7. The telecommunication tower owner shall submit to the County Planning and Zoning Administrator a sworn and certified statement by an engineer certifying that the telecommunication tower is structurally sound and conforms to the requirements of the Minnesota Building Code and all other construction standards set forth by the County Code, Federal and State Law.

Subdivision 5: Setback Requirements.

- 1. All telecommunication towers shall be set back a distance equal to the tower height from all property lines. All accessory structures shall be setback a minimum of sixty-five (65) feet from the right of way line, and fifty (50) feet from all side yard and rear yard property lines. All anchoring structures shall be setback at least ten (10) feet from all property lines.
- 2. Setback requirements for all telecommunication towers shall be measured from the base of the tower to the property line of the parcel on which it is located.

Subdivision 6: Structural & Placement Requirements.

- 1. All telecommunication towers must be designed and certified by an engineer to be structurally sound and, at minimum, in conformance with the Minnesota building codes, and any other standards outlined in this Section.
- 2. Height measurement of the telecommunication tower for the purpose of determining compliance with all requirements of this section shall include the telecommunication tower structure itself, the base pad, and any other telecommunication facilities attached thereto. Telecommunication Tower height shall be measured from grade.
- 3. Telecommunication towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA).

4. Telecommunication towers not requiring FAA painting or marking, shall have an exterior finish approved by the appropriate reviewing body. All telecommunication towers and their antennas shall utilize building materials, colors, textures, screening and landscaping that effectively blend the telecommunication tower facilities within the surrounding natural setting and built environmentally to the greatest extent possible.
5. All telecommunication towers shall be reasonably protected against unauthorized climbing, and shall be posted and secured to protect against trespass. The area around the base of the tower and around each guy wire anchor shall be enclosed by a fence with a minimum height of six (6) feet chain link fence with a locked gate. A minimum of three (3) strands of barbed or razor wire shall be installed on top of the chain link fencing.

Subdivision 7: Prohibited Uses.

1. No advertising or identification of any kind intended to be visible from the ground or other structures is permitted, except applicable warning and equipment information signage required by the manufacturer or by Federal, State, or local authorities.
2. No part of any telecommunication tower or antenna, nor any lines, cable, equipment, wires, or braces shall at any time extend across or over any part of the right of way, public street, highway, or sidewalk.

Subdivision 8: Maintenance.

1. Telecommunication tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. Telecommunication tower owners shall install and maintain the telecommunication towers and facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
3. All telecommunications towers and facilities and antenna support structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.
4. All maintenance or construction on a telecommunication tower and facilities or antenna support structure shall be performed by licensed maintenance and construction personnel.
5. All telecommunication towers shall maintain compliance with current radio frequency emissions standards of the FCC.
6. In the event the use of a telecommunication tower is discontinued by the tower owner, the tower owner shall provide written notice to the County Planning and Zoning Authority of its intent to discontinue use and the date when the use shall be discontinued.

Subdivision 9: Existing Towers.

1. Any owner upon whose land a telecommunication tower is located, which contains additional capacity for installation or collocation of telecommunication facilities, shall allow other persons to install or collocate telecommunication facilities on such a telecommunication tower subject to reasonable terms and conditions negotiated between the parties.
2. An existing telecommunication tower may be modified to accommodate co-location of additional telecommunication facilities as follows:
 - a.) Application for a County Setback Permit shall be made to the County Zoning Office.
 - b.) Permission to exceed the existing height shall not require an additional distance separation from designated areas as set forth in section 24 of the County Zoning Ordinance.
 - c.) A telecommunication tower which is being rebuilt to accommodate the co-location of additional telecommunication facilities may be moved on site subject to the setback requirements of this section.

Subdivision 10: Obsolete or Unused Towers.

1. All obsolete or unused telecommunication towers and accompanying accessory facilities shall be removed within one (1) year of the cessation of operations at the site unless a time extension is approved by the County Board of Commissioners.
2. After the facilities are removed, the site shall be restored to its original or an improved state. Electronic equipment shall not be removed in advance of removal of obsolete or unused telecommunication towers.
3. Failure to remove the structure shall be cause for the County to remove the telecommunication tower and associated equipment and assess the cost against the property for collection with the real estate taxes.

TELECOMMUNICATION TOWERS
AND
WIRELESS COMMUNICATION FACILITIES
TOWER CO-LOCATION AND REMOVAL AGREEMENT

File # _____ Owner Name
(s): _____

Parcel # _____ Applicant Name: _____

AGREEMENT TO BE ATTACHED TO THE APPLICATION AND CONDITIONAL USE PERMIT IF REQUIRED FOR A TELECOMMUNICATION TOWER AND WIRELESS COMMUNICATION FACILITY ON THE PROPERTY LEGALLY DESCRIBED IN APPLICATION.

COTTONWOOD COUNTY REQUIRES A COMMITMENT TO SPECIFIC STANDARDS FOR THE PLACEMENT OF TELECOMMUNICATION TOWERS AND WIRELESS COMMUNICATION FACILITIES AND IN GENERAL:

THEREFORE, THE PROPERTY OWNER(S) AND APPLICANT AGREE TO THE FOLLOWING:

1. The telecommunication tower and facilities will be designed for not less than three users.
2. There will be no prohibition or discouragement of additional users on the telecommunication tower and facility. Every effort will be made to accommodate requests and prevent undue delay for co-location by additional users.
3. An unused or obsolete telecommunication tower and facilities will be removed by the applicant and /or property owner as specified in Section 24, Subdivision 10 of the Cottonwood County Zoning Ordinance.

It is hereby certified and affirmed that both the applicant and property owner (s) have read, fully understand and agree to the minimal standards described above. The agreement shall be binding on all heirs, successors and/or assigns. Upon approval of a Setback Permit and a Conditional Use Permit for the property legally described in Exhibit A, it is understood that violating the terms of the agreement will be considered a violation of the Cottonwood County Zoning Ordinance.

Signature of the Property Owner (s): _____

Signature of the Property Owner (s): _____

Date Signed: _____

Signature of the Applicant: _____

Date Signed: _____