

Chapter 22 - TELECOMMUNICATIONS TOWERS, ANTENNAS AND RELATED FACILITIES^[1]

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Editor's note— Ord. No. 179, Am. #105, § 2, adopted Apr. 15, 2014, repealed the former Ch. 22, §§ 22.010—22.112, and enacted a new Ch. 22 as set out herein. The former Ch. 22 pertained to similar subject matter.

22.01 - PURPOSE AND INTENT

The purpose of this chapter is to regulate by zoning permit telecommunication towers, antennas, and related facilities. The regulations set forth by this chapter apply to all telecommunication towers, antennas, and related facilities unless exempted specifically; including all of the following: (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

The county board has the specific authority under § 59.69 and § 66.0404 Wis. Stats., to adopt and enforce this chapter. It is intended that Pepin County shall apply the regulations of this chapter to accomplish the following:

- (1) Maintain and ensure that a nondiscriminatory, competitive and broad range of telecommunications services and high quality telecommunications infrastructure consistent with the Federal Telecommunications Act of 1996 are provided to serve the community, as well as serve as an important and effective part of the Pepin County police, fire and emergency response network.
- (2) Provide a process for obtaining necessary permits for telecommunication facilities while at the same time protecting the interests of Pepin County citizens.
- (3) Facilitate the development and future upgrades of telecommunication services available in Pepin County.

22.02 - DEFINITIONS

For the purposes of this chapter the following terms and phrases shall have the meaning ascribed to them in this section:

ALTERNATIVE SUPPORT STRUCTURE includes clock towers, steeples, silos, light poles, water towers, buildings or similar structures that may support telecommunication facilities.

ANTENNA means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

APPLICATION means an application for a permit under this section to engage in an activity specified for the siting and construction of a new mobile support structure and facilities; and, with regards to a Class 1 collocation, the substantial modification of an existing support structure and mobile services facilities, or a Class 2 collocation.

BUILDING means any structure having a roof that is supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind

BUILDING MOUNTED ANTENNA means any antenna that is directly attached or affixed to a building or alternative support structure.

BUILDING PERMIT means a permit issued by a political subdivision that authorizes an applicant to conduct construction activity that is consistent with the political subdivision's building code.

CLASS 1 COLLOCATION means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility but does need to engage in substantial modification.

CLASS 2 COLLOCATION means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility or engage in substantial modification.

COLLOCATION means the location of more than one antenna or set of antennas on the same structure; this shall refer to Class 1 or Class 2 collocation or both.

DISTRIBUTED ANTENNA SYSTEM means a network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.

EQUIPMENT COMPOUND means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

EXISTING STRUCTURE means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with a political subdivision.

FALL ZONE means the area over which a mobile support structure is designed to collapse.

GROUND MOUNTED ANTENNA means any antenna with its base placed directly on the ground.

GUYED TOWER means a telecommunications tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself.

LATTICE TOWER refers to a telecommunication tower that consists of vertical and horizontal supports and crossed metal braces.

MOBILE SERVICE has the meaning given in 47 USC 153 (33); a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

- (1) Both one-way and two-way radio communication services,
- (2) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way mobile radio communications by eligible users over designated areas of operation, and

- (3) Any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services, or any successor proceeding.

MOBILE SERVICE FACILITY means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

MOBILE SERVICE PROVIDER means a person who provides mobile service.

MOBILE SERVICE SUPPORT STRUCTURE means a freestanding structure that is designed to support a mobile service facility.

MONOPOLE means telecommunication tower of a single pole design.

PERMIT means a permit, other than a building permit, or approval issued by a political subdivision which authorizes any of the following activities by an applicant:

- (1) A class 1 collocation.
- (2) A class 2 collocation.
- (3) The construction of a mobile service support structure.

POLITICAL SUBDIVISION means a city, village, town, or county.

PUBLIC UTILITY has the meaning given in § 196.01(5).

SEARCH RING means a shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.

SUBSTANTIAL MODIFICATION means the modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

- (1) For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.
- (2) For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more.
- (3) Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for collocation.
- (4) Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

SUPPORT STRUCTURE means an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

TELECOMMUNICATION FACILITY means a facility, site, or location that contains one or more antennas, telecommunication towers, alternative support structures, satellite dish antennas, other similar communication devices, and support equipment which is used for transmitting, receiving, or relaying telecommunications signals, excluding those facilities exempted under § 22.07.

TELECOMMUNICATION SUPPORT FACILITY: The telecommunication equipment buildings and equipment cabinets.

TELECOMMUNICATIONS TOWER means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including lattice towers, guy towers, or monopole towers. This includes radio and television transmission towers, microwave towers, and common-carrier towers. It shall exclude alternative support structures and those facilities exempted under §22.07.

UTILITY POLE means a structure owned or operated by an alternative telecommunications utility, as defined in § 196.01(1d); public utility, as defined in § 196.01(5); telecommunications utility, as defined in § 196.01(10); political subdivision; or cooperative association organized under ch. 185; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in § 182.017(1g) (cq); for video service, as defined in § 66.0420(2)(y); for electricity; or to provide light.

UTILITY POLE MOUNTED ANTENNA means an antenna attached, without regard to mounting, to or upon an existing or replacement electric transmission or distribution pole, street light, traffic signal, athletic field light, utility support structure or other similar structure approved by the Zoning Administrator.

22.03 - SITING AND CONSTRUCTION OF NEW TELECOMMUNICATION TOWER, MOBILE SERVICE SUPPORT STRUCTURE, AND RELATED FACILITIES

Application process:

- (1) All telecommunication facilities, unless exempted by § 22.07, are required to complete a telecommunication facility permit application for the siting and construction of any new structure or facility.
- (2) A written permit application must be completed by any applicant and submitted to the Pepin County Land Management Department. The application must contain the following information:
 - (a) The name and business address of, and the contact individual for, the applicant.
 - (b) The location of the proposed or affected support structure.
 - (c) The location of the proposed telecommunication facility.

- (d) If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - (e) If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 - (f) If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- (3) A permit application will be provided by the county upon request to any applicant.
 - (4) If an applicant submits to the county an application for a permit to engage in an activity described in this chapter, which contains all of the information required under this chapter, the county shall consider the application complete. If the county does not believe that the application is complete, the county shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
 - (5) Within 90 days of its receipt of a complete application, the county shall complete all of the following or the applicant may consider the application approved, except that the applicant and the county may agree in writing to an extension of the 90 day period:
 - (a) Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
 - (b) Make a final decision whether to approve or disapprove the application.
 - (c) Notify the applicant, in writing, of its final decision.
 - (d) If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
 - (6) The county may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph (2)f.

- (7) If an applicant provides the county with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the county provides the applicant with substantial evidence that the engineering certification is flawed.
- (8) The fee associated with the telecommunication facility permit is \$1000.00.

22.04 - CLASS 1 COLLOCATION

Application Process:

- (1) A county land use permit is required for a Class 1 collocation.
- (2) A written permit application must be completed by any applicant and submitted to the county. The application must contain the following information:
 - (a) The name and business address of, and the contact individual for, the applicant.
 - (b) The location of the proposed or affected support structure.
 - (c) The location of the proposed mobile service facility.
 - (d) If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - (e) If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 - (f) If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- (3) A permit application will be provided by the county upon request to any applicant.
- (4) If an applicant submits to the county an application for a permit to engage in an activity described in this section, which contains all of the information required under this chapter, the county shall consider the application complete. If the county does not believe that the application is complete, the county shall notify the

applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

- (5) Within 90 days of its receipt of a complete application, the county shall complete all of the following or the applicant may consider the application approved, except that the applicant and the county may agree in writing to an extension of the 90 day period:
 - (a) Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
 - (b) Make a final decision whether to approve or disapprove the application.
 - (c) Notify the applicant, in writing, of its final decision.
 - (d) If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
- (6) The county may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.f.
- (7) If an applicant provides the county with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the county provides the applicant with substantial evidence that the engineering certification is flawed.
- (8) Class 1 collocations are subject to the same fees as a land use permit.

22.05 - CLASS 2 COLLOCATION

Application Process:

- (1) A county land use permit is required for a Class 2 collocation.
- (2) A written permit application must be completed by any applicant and submitted to the county. The application must contain the following information:
 - (a) The name and business address of, and the contact individual for, the applicant.
 - (b) The location of the proposed or affected support structure.
 - (c) The location of the proposed mobile service facility.
- (3) A permit application will be provided by the county upon request to any applicant.

- (4) A Class 2 collocation is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject.
- (5) If an applicant submits to the county an application for a permit to engage in an activity described in this chapter, which contains all of the information required under this chapter, the county shall consider the application complete. If any of the required information is not in the application, the county shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- (6) Within 45 days of its receipt of a complete application, the county shall complete all of the following or the applicant may consider the application approved, except that the applicant and the county may agree in writing to an extension of the 45 day period:
 - (a) Make a final decision whether to approve or disapprove the application.
 - (b) Notify the applicant, in writing, of its final decision.
 - (c) If the application is approved, issue the applicant the relevant permit.
 - (d) If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
- (7) Class 2 collocation is subject to the same fees as a land use permit.

22.06 - SEVERABILITY

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

22.07 - EXEMPT FROM COUNTY REVIEW

The following shall be permitted without County approval:

- (1) The use of all television antennas, satellite dishes and receive-only antennas, provided that the primary use of the property is not a telecommunications facility and that the antenna use is accessory to the primary use of the property.
- (2) Amateur Radio. This chapter shall not govern the installation of any antenna and their supporting towers, poles and masts that is owned and/or operated by a federally licensed amateur radio operator or, is used exclusively for receive-only antennas.
- (3) Mobile services providing public information coverage of news events of a temporary or emergency nature.

- (4) Building mounted antennas attached to alternative support structures provided that the height of the antenna and its supporting tower, pole, or mast is 30 feet or less above the highest portion of the building or alternative support structure.
- (5) Ground mounted antennas provided that the height of the antenna and its support structures does not exceed a height of 45 feet above the original grade at the site of the installation.

22.08 - COMPLIANCE WITH ZONING REGULATIONS REQUIRED

Telecommunications towers, antennas, and related facilities shall be required to comply with state and federal laws concerning construction near or on wetlands, lakes, rivers, and streams. In the event that a telecommunication tower, antenna, or related facility is located in an area subject to floodplain, shoreland, and/or wetland zoning compliance with relevant regulations and additional permits shall be required.

22.09 - INSPECTION

At any time that the Zoning Department has reason to believe that an existing tower has become a safety risk or is structurally unsafe, it can require the tower owner to perform an inspection of the tower by a registered engineer and to provide a copy of the inspection results to the Department within 60 days of the Department's order to perform an inspection. The Zoning Department shall provide the owner of the tower with the information which formed the basis for the Department's belief that the tower was unsafe or a safety risk before ordering an inspection of the tower be performed.

22.10 - SECURITY FOR REMOVAL

Responsibility for removal of unused towers:

It is the express policy of Pepin County and this chapter that telecommunications facilities be removed once they are no longer in use and not a functional part of providing telecommunications service and that it is the telecommunications tower owner's responsibility to remove such facilities.

Security for removal:

The telecommunications tower owner shall provide to Pepin County, prior to the issuance of the permit, a performance bond in the amount of \$20,000.00 or a bond in such amount as a qualified tower removal contractor has estimated in writing upon request of the County as covering the cost of removal of a tower no longer in operation.

22.11 - PRE-EXISTING TELECOMMUNICATION TOWERS AND ANTENNAS

- (1) Owners of nonconforming and conforming telecommunication towers and facilities may modify existing tower and facilities by complying with all applicable requirements of § 22.04 and § 22.05 of this chapter. Changes may be made upon

review and approval by the Zoning Department. Routine maintenance and repair on telecommunications facilities is permitted.

- (2) All unused towers and antennas must be removed within 12 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 or an improved condition, and anchoring elements shall be removed from the ground to within 8 feet of ground level. If removal and/or restoration is not completed, the County is authorized to complete the removal and site restoration and the cost shall be assessed against the property as a special assessment. Any addition or change to a preexisting tower or antenna shall comply with all applicable requirements of this subchapter.

22.12 - APPEAL PROCEDURES

Any person aggrieved by any decision of the Pepin County Zoning Administrator, regarding any decision made under this Code may be brought to the Board of Adjustment under § 59.694, Wis. Stats.