

CELLULAR TOWERS

01/07/02

REGULATING CELLULAR TOWERS WITHIN THE TOWNSHIP

The Town Board of the Town of Vienna, Dane County, Wisconsin, pursuant to authority vested in it, does hereby ordain as follows:

PART ONE:

SECTION 1. INTENT.

Wireless telecommunication towers and antennas may be installed, erected, modified, and maintained pursuant to the provisions of this ordinance.

SECTION 2. PURPOSE.

The purpose of this ordinance is:

1. To ensure the provision of personal wireless service within the corporate boundaries of, and for the benefit of, the residents of the Town of Vienna;
2. To protect the public health, safety, and general welfare of the community, public and private property, and community aesthetics;
3. To minimize the visual impact of towers, antennas, and associated buildings through design and siting standards;
4. To maximize the use of existing and approved towers and buildings to accommodate multiple antennas in order to reduce the number of towers needed to serve the community; and
5. To avoid damage to adjacent properties from tower failure through structural standards and setback requirements.

SECTION 3. DEFINITIONS.

For purposes of this ordinance of the Town, the terms defined in this ordinance have the meanings given them.

1. Accessory Equipment Structure: A building or cabinet-like structure located adjacent to or in the immediate vicinity of a wireless telecommunications tower or antenna to house equipment customarily incidental to the receiving or transmitting of wireless broadcasts, cellular telephone calls, voice messaging, and paging services.
2. Antenna: Equipment used for transmitting or receiving radio frequency signals which is attached to a tower, building, or other structure, usually consisting of a series of directional panels, microwave or satellite dishes, or omnidirectional "whip" antennas.
3. Antenna Support Structure: Any building, pole, telescoping mast, tower, tripod, or any other structure which supports an antenna.
4. Base Transceiver Station: Equipment that provides the link between wireless communications and land-based public telephone switching networks, including radio frequency transceivers, back-up power amplifiers, and signal processing hardware, typically contained in a small building or cabinet.

5. Co-Location: The location of wireless telecommunications equipment from more than one provider on a common tower, building, or structure.
6. Commercial Receiving and/or Transmitting Antenna: Any antenna erected to transfer information for commercial use.
7. Mast: The portion of the outside antenna system to which the antenna is attached and the support or extension required to elevate the antenna to a height deemed necessary for adequate operation.
8. Personal Wireless Services: Licensed commercial wireless communication services including cellular, personal communication services (PCS), enhanced specialized mobilized radio (EMR), paging and similar services.
9. Public Property: Land, buildings, or other structures owned or operated by the Town of Vienna.
10. Tower: Any pole, spire, structure, or combination thereof to which antenna could be attached, or which is designed for an antenna to be attached, and all supporting lines, cables, wires, and braces.
11. Uniform Building Code (UBC): Published by the International Conference of Building Officials and referenced by the State of Wisconsin to provide jurisdictions with building-related standards and regulations.

SECTION 4. EXISTING TOWERS OR ANTENNAS.

Antennas, towers, and accessory structures for which a building permit or special use permit has been properly issued prior to the effective date of this ordinance are, after the effective date hereof, declared to be nonconforming uses subject to the provisions of this ordinance.

SECTION 5. INTERPRETATION AND APPLICABILITY.

1. This ordinance shall be interpreted consistent with the provisions of the Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996.
2. This ordinance shall apply to all persons, partnerships, limited liability companies, limited liability partnerships, corporations, and other entities seeking to locate, site, place, modify, or construct wireless telecommunications facilities within the corporate boundaries of the Town.
3. This ordinance reserves to the Town all authority contained in state law and existing town ordinances regarding land use and regulation which has not been preempted by the federal government pursuant to section 704 of the Telecommunications Act of 1996 as to the placement, construction, and modification of personal wireless service facilities.
4. This ordinance does not apply to the use or location of private residential citizen band radio towers, amateur radio towers, television antennas, or public safety communication facilities owned or operated by the Town of Vienna or other public municipalities.

SECTION 6. GENERAL PERMIT CONDITIONS AND HEIGHT LIMITATIONS.

- A. Wireless telecommunication antennas shall be allowed as a permitted use in those zoning districts where antennas are permitted and if located or attached as follows:
 1. Water Towers. Wireless telecommunication antennas shall be permitted upon Town-owned structures provided the applicant has incorporated applicable

performance standards set forth in Section 8 of this ordinance, a lease agreement with the Town has been approved by the Town Board, a building permit has been obtained, and all applicable fees have been paid.

2. **Co-Location on Existing Towers.** Wireless telecommunication antennas shall be permitted to be attached to existing, conforming church steeples, bell towers, smokestacks, municipal, utility, hospital, and school buildings and radio towers in accordance with applicable siting guidelines and performance standards set forth in Sections 7 and 8 of this ordinance after the applicant has provided to the Town a written statement of approval from the tower or structure owner or lessor, has obtained a building permit from the Town and paid all applicable fees. The antenna shall not serve to extend the height of the existing, conforming steeple, tower, smokestack, or radio tower by more than fifteen (15) feet.
 3. **Utility Poles.** Wireless telecommunication antennas shall be permitted to be attached to utility poles after the applicant has provided a written statement of approval from the utility owner or lessor, has obtained a building permit from the Town, and paid the necessary fees. The height of the antenna shall not extend more than fifteen (15) feet above the pole. Existing lattice utility pole structures may also be utilized provided the approval from the owner and building permit is obtained.
- B. **Height Limitations.** The height limitations in residential areas and agricultural areas shall not exceed fifteen (15) feet above the height of the roof of an existing structure or for new construction as follows: for single use, ninety (90) feet; for dual uses, one hundred twenty (120) feet, and for three or more uses, up to one hundred fifty (150) feet; and shall include all parts of the wireless telecommunication tower and antenna structure measured from the base.

SECTION 7. COLOCATION REQUIREMENTS.

No proposal for the construction of a new wireless telecommunication tower shall be approved unless the applicant documents to the satisfaction of the Town Board that the antenna planned for the proposed tower cannot reasonably be accommodated on a Town-owned structure, on an existing, conforming co-location tower or structure, or on a utility pole within the applicant's search ring transcending the municipal borders for the purpose of providing service to the residents and businesses of the Town due to one or more of the following:

1. The antenna would exceed the structural capacity of an existing tower or building; (new towers antenna support structures must be built with a base structural capacity which would have the ability to locate up to three additional users).
2. The antenna would cause interference with other existing or planned equipment at the tower or building;
3. Existing or approved towers and buildings cannot reasonably accommodate the antenna at a height necessary for the proposed antenna to provide services to the residents and businesses of the Town;
4. Existing or approved towers and commercial buildings are outside of the documented search area; or
5. The owners or lessors of the existing or approved towers and buildings are unwilling to allow co-location upon their facilities.

SECTION 8. PERFORMANCE STANDARDS.

The requirements of this section apply to all wireless telecommunications towers and antennas erected, constructed, placed, modified, or replaced in the Town of Vienna. All wireless telecommunication towers and antennas shall be designed and situated to be visually unobtrusive, to minimize the impact upon neighboring uses, and shall conform to the following design and siting criteria:

1. **Setbacks.** The minimum setback from any property line, public right-of way, building, or structure, except for accessory buildings or equipment structures, for a wireless telecommunication tower shall be equal to one hundred percent (100%) of the height of the tower. Setbacks for accessory buildings and equipment structures associated with wireless telecommunication towers and antennas shall comply with the zoning district in which the facility is located.
2. **Accessory Equipment Structures.** All accessory equipment structures adjacent to an antenna system and/or tower shall be screened or architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the applicable zoning district. The accessory equipment structure, or accessory equipment land parcel, shall have the capacity to house the equipment of up to three additional co-locators.
3. **Fencing.** When deemed applicable by the Town, appropriate safety fencing shall be incorporated within the site accommodating the tower and its accessory equipment structures.
4. **Landscaping and Screening.** When deemed applicable by the Town, proper landscaping and screening shall be incorporated into the site accommodating the tower and its accessory equipment structures.
5. **Color.** The wireless telecommunication tower and antenna shall be of a neutral color such as light gray or sky blue except as dictated by the Federal Aviation Administration (FAA) and be designed to minimize visibility and to blend into the surrounding environment.
6. **All towers with antennas shall be designed to withstand applicable wind load requirements as prescribed in the State of Wisconsin Uniform Building Code. Towers and/or antenna systems shall be constructed of or treated with corrosive resistant material. A regular maintenance schedule shall be followed.**
7. **Roof-Mounted Wireless Communication Antennas.** Roof-mounted wireless telecommunication antennas shall not be permitted on buildings with pitched roofs unless they are stealth antennas incorporated into upward-thrusting architectural elements such as a church steeple, spire, or bell tower smokestack or radio tower. On flat roofs, the height of the antenna and mounting hardware may not be more than fifteen (15) feet above the highest point of the roof to which the antenna is attached.
8. **Structurally-Mounted Wireless Communication Antennas.** Tele communication antennas mounted on the sides of buildings shall be attached flush with the side of the building and shall not protrude more than three (3) feet from the side of the building. Structurally-mounted antennas not affixed to towers shall be made to blend into the design and contours of the structure.
9. **Lights.** No antenna or tower shall have affixed or attached to it in any way any lights, reflectors, flashers, daytime strobes, or steady nighttime light or other illuminating devices except as may be required by the Federal Aviation Administration (FAA).

10. Signs and Advertising. No signs and/or advertising messages shall be affixed to the antenna or tower structure.
11. Other Attachments. No antenna or tower shall have constructed thereon or attached thereto any platform, catwalk, crow's nest, or like structure for the purpose of human support except during periods of construction and repair.

SECTION 9. OBSOLETE OR UNUSED TOWERS.

All obsolete, damaged, unused, or abandoned towers and accompanying accessory facilities shall be removed within twelve (12) months of the cessation of operations unless a time extension is approved by the Town of Vienna Board. If the tower is not removed, it may be deemed a nuisance pursuant to Wisconsin Statutes. In the event a tower is determined to be a nuisance, the Town may act to abate such nuisance and require the removal of the tower at the property owner's expense. The owner shall provide the Town with a copy of the notice of the Federal Communication Commission's (FCC) intent to cease operations and shall be given twelve (12) months from the date of ceasing operations to remove the obsolete tower and all accessory structures. In the case of multiple operators sharing the use of a single tower, this provision shall not become effective until all users cease operations for a period of twelve (12) consecutive months. The equipment on the ground is not to be removed until the tower structure has first been dismantled. After the facilities are removed, the site shall be restored to its original or an improved state.

SECTION 10. PROCEDURAL REQUIREMENTS.

Applicants proposing to erect wireless telecommunication towers or antennas shall follow procedures as set forth in this ordinance. Additional application materials shall include the following:

- A document from the property owner or lessor that allows the applicant to apply for a conditional use permit and building permit to erect a wireless telecommunications tower and/or antenna.
- A "scaled" site plan which shows property lines, location of wireless telecommunication tower or antenna, setback distances, any accessory equipment structure, fencing, and landscaping proposed.
- Photographs of the proposed site, an artist's or architect's sketch, concept, or rendition of the site as built which demonstrates to the satisfaction of the Town Board that the proposed site will be as aesthetical as possible in keeping with its surroundings, including elevations, landscaping, screening, appropriate camouflage, and fencing.
- Sufficient information to show that construction, installation, and maintenance of the wireless telecommunication tower and/or antenna will not create a safety hazard or damage to the property of other persons.

PART TWO:

SECTION 1. BUILDING PERMITS.

No person shall place, construct, or modify a wireless telecommunication tower or antenna without first having obtained a building permit. All towers and antennas are subject to plan review and inspection by the Town to determine compliance with the State of Wisconsin

Uniform Building Code construction standards. No building permit shall be issued by the Town without prior approval of a Conditional Use Permit (CUP) by Dane County. The applicant shall provide to the Town all information as required by this and other applicable ordinances of the Town at the time of application for a building permit. In addition to any other requirements of this or any other section of this ordinance, the building permit application shall include the following:

- A. A report and plan from a qualified and registered engineer or firm that specifies the following:
 - 1. the tower height and design including cross-section and elevation;
 - 2. the height above grade for all potential mounting positions for co location antenna and the minimum separation distances between antennas;
 - 3. structural mounting designs and materials list;
 - 4. the capacity of the tower, including the number and type of antennas that the tower can accommodate; and
 - 5. as applicable, an engineer's stamp and number.
- B. Structural and electrical plans showing how the proposed tower will accommodate the co-location of the applicant's antenna and comparable antennas of additional users and the plans and specifications whereby the proposed tower is designed to allow for future rearrangement of antennas to accommodate additional users and the mounting of additional antennas at varying heights.
- C. Plans and specifications showing how the proposed facility will be maintained in keeping with uniform building codes adopted by the Town.

SECTION 2. INSPECTION.

The Town may, at any time, inspect any telecommunications tower, antenna, or other facility to ensure its structural integrity. If, upon such inspection, the Town's duly designated inspector determines that the facility fails to comply with such applicable codes and that such failure constitutes a danger to persons or property, then upon notice being provided to the owner of the facility, the owner shall have thirty (30) days to bring the facility into compliance with the applicable codes and standards. Failure to bring the facility into compliance within the said thirty (30) days shall constitute cause for the removal of the facility at the owner's expense.

SECTION 3. NON-INTERFERENCE.

All new or existing telecommunications services shall comply with all relevant Federal Communication Commission (FCC) and Federal Aviation Administration (FAA) standards and shall not interfere with public safety and other Town and private telecommunications operations.

SECTION 4. INSURANCE AND HOLD-HARMLESS AGREEMENT.

The applicant shall provide the Town with proof of liability insurance which protects against losses due to personal injury or property damage resulting from the construction, operation, or collapse of the tower, antenna or accessory equipment. In addition to the insurance required, the person applying for a permit shall agree to execute and deliver to the Town Clerk of the Town of Vienna a Hold Harmless Agreement in which the person applying for the permit agrees to save and hold the Town of Vienna, its Board, agents or employees harmless from any and all liabilities of any kind or nature whatsoever which may arise as a result of the person being issued

a permit as described herein, including, but not limited by enumeration, reasonable attorneys' fees and court costs incurred by the Town in defending against any claim or in enforcing this ordinance. Such Hold Harmless Agreement shall be executed prior to the issuance of the permit.

SECTION 5. PENALTIES.

Any person, firm, company, or corporation who violates any provision of this ordinance or fails to comply with any of its requirements shall be subject to a forfeiture for each offense of not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00) for each violation and, in addition, shall pay all costs and expenses involved in the matter, including reasonable attorneys' fees and court costs. Each day that a violation continues shall be considered a separate offense. Compliance with the provisions of this ordinance may also be enforced by the Town or one or more owners of real estate situated within the area affected by the regulation of the ordinance. Any building erected, structurally altered, determined to be unsafe, or any use carried on in violation of the provisions of this ordinance is hereby declared to be a public nuisance per se, and the Town may apply to any Dane County court to refrain or abate such nuisance.

SECTION 6. ENFORCEMENT.

The Town Board of the Town of Vienna, by the Town attorney or such person as set forth in Section 15 of this ordinance, may bring a civil action in any Dane County court by filing with it a complaint setting forth the facts and requesting such preventative relief, including an application for a temporary or permanent injunction, restraining order, or such other order as the Town deems necessary to insure the full enjoyment of the rights granted by this ordinance, provided, however, that nothing contained herein shall prevent the imposition of a forfeiture in addition to other remedies enumerated herein. The costs of such proceedings shall be collected as a debt from the owner, occupant, or person causing, permitting, or maintaining the violation and/or nuisance, and such cost shall be assessed against the real estate as a special charge on the tax rolls. For purposes hereof, costs shall include, but not be limited to, actual attorneys' fees and court costs.

SECTION 7. SEVERABILITY.

If any provision of this ordinance is invalid or unconstitutional or if the application of this ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not effect the provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

SECTION 8. APPEAL PROCEDURES.

Any person affected by any decision, action, denial, or determination made by the interpreting or implementing provisions of this ordinance may file an appeal with the Town Clerk of the Town of Vienna within fifteen (15) days of the date of such decision, action, denial, or determination setting forth in detail the facts supporting the request for reconsideration. The Town Board upon receiving the request for reconsideration shall publish the request as required by law. The Town Board shall render its decision, in writing, on the request for consideration to the person filing the appeal within forty-five (45) days of receipt of the request. Any further appeal shall be provided by the laws of the State of Wisconsin.

SECTION 9. EFFECTIVE DATE.

This ordinance shall take effect upon its passage and publication as provided by law.

The foregoing ordinance was duly adopted at a regular meeting of the Town Board of the Town of Vienna on Jan. 7, 2002.

Carlton Hamre, Chairman
Daniel Muxfield, Supervisor
Lloyd Simpson, Supervisor

ATTEST: Robert Pulvermacher, Town Clerk

I hereby certify that the foregoing ordinance regulating cellular towers within the Town of Vienna was published as a Class 1 notice under ch. 985, Wis. Stats., on the 7th day of January, 2002.

Published after adoption on the 7th day of January, 2002.
Robert Pulvermacher, Town Clerk