

**TOWN OF BUFFALO
Marquette County
State of Wisconsin**

ORDINANCE

CHAPTER 11

TELECOMMUNICATIONS ANTENNAS AND TOWERS

MAY 2008

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SECTION 1 – TITLE/PURPOSE

This ordinance is titled the Town of Buffalo Telecommunications Antennas and Towers Ordinance. The purpose of this ordinance is for the Town of Buffalo to regulate and prohibit certain acts regarding telecommunications antennas and towers. The purpose of this ordinance is to establish general guidelines for the siting of towers and antennas. The purpose of the ordinance is to protect the health, safety and welfare of township residents by assuring that any construction in the Town of Buffalo will comply with:

- 1) County permit requirements.
- 2) County and state floodplain, wetland and shore land zoning requirements.
- 3) Any state-mandated or county building ordinances that exist at the time of construction.
- 4) State and Federal building plan approval procedures.
- 5) Town of Buffalo land use ordinances and permit requirements

1.C. Abrogation and Greater Restrictions. It is not intended by this Ordinance to interfere with, abrogate or annul any existing easements, covenants or other agreements between parties. Whenever the Marquette County Shoreland/Flood Plain, Subdivision or Airport Zoning Ordinances conflict with applicable underlying provisions of this Ordinance or of the Town of Buffalo Subdivision/Land Division Ordinance (Chapter 11), the more restrictive combinations of such ordinances shall govern.

1.D. Interpretation. The provisions of this Ordinance shall be held to be minimum requirements adopted to promote the health, safety, morals, beauty, aesthetics and general welfare of the Town of Buffalo, Marquette County, Wisconsin, and shall be liberally construed in favor of the Ordinance.

SECTION 2 – AUTHORITY

The town board of the Town of Buffalo has been granted village powers pursuant to Sec 60.10 Wisconsin Statutes and has the specific authority, powers and duties to regulate, prohibit, and restrict construction, alteration, erection, and enlargement of certain structures and buildings in the Town of Buffalo and to act for the health, safety, and welfare of the public.

SECTION 3 – ADOPTION OF ORDINANCE

The town board of the Town of Buffalo, by this ordinance, adopted with a quorum and by a roll call vote by a majority of the town board present and voting, provides the authority for the town to regulate, prohibit, and restrict construction, alteration, erection, and enlargement of certain structures and buildings in the Town of Buffalo.

SECTION 4 – DEFINITIONS

As used in this ordinance, the following terms shall have the meanings indicated:

Alternative tower structure shall mean man-made structures such as light poles, elevated tanks, electric utility transmission line towers, non-residential buildings, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna shall mean any exterior apparatus designed for telephonic, radio, or television communications through the sending and/or receiving of electromagnetic waves.

FAA shall mean the Federal Aviation Administration.

FCC shall mean the Federal Communications Commission.

Governing Authority shall mean the governing authority of the Town of Buffalo.

Pre-existing towers and antennas shall have the meaning set forth in B(4) of this section.

Height shall mean, when referring to a tower or other structure, the distance measured from the ground level to the highest point on the tower or other structure, even if said highest point is the antenna.

Tower shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, PCS towers, alternative tower structures, and the like.

Town means the Town of Buffalo, Marquette County, Wisconsin.

Town board means the board of supervisors for the Town of Buffalo, Marquette County, Wisconsin and includes designees of the board authorized to act for the board.

Town clerk means the clerk of the Town of Buffalo, Marquette County, Wisconsin.

Wis. stats. means the Wisconsin Statutes, including successor provisions to cited statutes.

SECTION 5 – COVERAGE

Jurisdiction. The provisions of this Ordinance shall apply to all structures, land, water and air within the Town of Buffalo, Marquette County, Wisconsin.

Compliance. Unless otherwise provided by this Ordinance or applicable State or Federal Law, after the effective date of this Ordinance no structure, land or water shall be developed, and no structure or part thereof shall be located, erected, moved, reconstructed, enlarged, extended, converted or structurally altered without a Permit and without full compliance with this Ordinance and all other applicable Town, County and State regulations; provided, however, that this Ordinance shall not govern normal farming operations on farmland, or normal filling, grading or landscaping of land which is incidental to land use and development otherwise permitted under this ordinance.

All buildings or structures, including signs and Wireless Communications Facilities, regardless of their intended use or size, must meet the minimum requirements listed before a Building Permit will be issued.

A Building Permit will be good for one year from the date of issue. If the building is not completed during that time period, a new application and new permit will be required.

SECTION 6 – APPLICABILITY

1. District Height Limitations. The requirements set forth in this ordinance shall govern the location of towers that exceed, and antennas that are installed, at a height in excess of the height limitations specified for each zoning district. The height limitations applicable to the buildings and structures shall not apply to towers and antennas, however, in no case shall any tower (including antennas), exceed a height of one hundred sixty (160) feet.
2. Public Property. Antennas or towers located on property owned, leased, or otherwise controlled by the governing authority shall be exempt from the requirements of this ordinance, provided a license or lease authorizing such antennas or tower has been approved by the governing authority.
3. Amateur Radio: Receive-only Antennas. This ordinance shall not govern any tower, or the installation of any antenna, that is under thirty (30) feet in height and is owned and operated by a federally-licensed amateur radio operator or is used exclusively as a receive-only antenna.
4. Pre-Existing Towers and Antennas. Any tower or antenna for which a permit has been properly issued prior to the effective date of this ordinance shall not be required to meet the requirements of this section, other than the requirements of C5 and C6 unless a previous permit was conditioned upon compliance with new regulations. Any such towers or antennas shall be referred to in this article as “pre-existing towers” or “pre-existing antennas”.

SECTION 7 – GENERAL GUIDELINES AND REQUIREMENTS

1. The GOALS of this ordinance are to:

- A. Encourage the locations of the towers in non-residential areas and minimize the total number of towers throughout the community.
- B. Strongly encourage the joint use of new and existing tower sites.
- C. Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal.
- D. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas
- E. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.

2. PRINCIPAL OR ACCESSORY USE

- A. Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with the district development regulations, including but not limited to set-back 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 lots. 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 non-confirming use or structure.

3. INVENTORY OF EXISTING SITES.

- A. Each applicant for an antenna and or tower shall provide to the Town Board an inventory of all existing towers that are within a three (3) mile radius of the proposed site, including specific information about the location, height, and design of each tower. The Town Board may share such information with other applicants applying for administrative approvals or special exception permits under this article, or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, that the Town Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
4. AESTHETICS AND LIGHTING: The guidelines set forth in this Section 7.4. shall govern the location of all towers, and the installation of all antennas, governed by this article, provided, however, that the governing authority may waive these requirements if it determines that the goals of this ordinance are better served thereby.

- A. Towers shall maintain a galvanized steel finish, or, be subject any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 - B. 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 the tower facilities to the natural setting and built environment.
 - C. 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 is visually unobtrusive as possible.
 - D. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting, alternatives and approve the design that would cause the least disturbance to the surrounding views.
 - E. Towers and antennas shall not be used for displaying advertising. If FCC rules require that the owner's name be shown on the tower or antennae, it shall be posted no more that 6 ft. above the ground on a placard no larger than 1-1/2 sq. ft.
5. **FEDERAL REQUIREMENTS.** All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the 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 section shall bring the towers and antennas into compliance with such revised standards and regulations with six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling 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 by the governing authority at the owners expense.
6. **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 the standards contained in applicable state and 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 governing authority concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice be provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the

owner fails to bring such tower into compliance with said thirty (30) days, the governing authority may remove such tower at the owners expenses.

SECTION 8 – PERMITTED USES.

1. **GENERAL.** The uses listed in this Section 8 are deemed to be permitted uses and shall not require a Special Exception permit. Nevertheless, all such uses shall comply with Section 7 of this article and all other applicable articles. All permitted uses shall require staff review prior to issuance of any permit.
2. **SPECIFIC PERMITTED USES.** The following uses are specifically permitted:
 - A. Installing an antenna on an existing structure other than a tower (such as elevated tanks, electric utility transmission line towers, or non-residential buildings) , so long as said additional antenna adds no more than twenty (20) feet to the height of said existing structure; and
 - B. Installing an antenna on an existing tower, including a pre-existing tower, and further including the placement of additional buildings or other supporting equipment used in connection with said antenna, so long as any accessory building does not exceed 150 sq. ft. per user.

SECTION 9 – SPECIAL EXCEPTION PERMITS

1. **GENERAL.** The following provisions shall govern Special Exception Permits:
 - A. If the tower or antenna is not a permitted use under Section 8 of this article, then a Special Exception permit shall be required prior to construction of any tower, or the placement of any antenna.
 - B. Towers and antennas may only be located in the Agricultural (AG) and Commercial (C) zoning districts, except that amateur radio towers or antennas may be considered in residential districts.
 - C. If a Special Exception permit is granted, the governing authority may impose conditions to the extent the governing authority concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
 - D. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.

2. **INFORMATION REQUIRED.** Each applicant requesting a Special Exception permit under this ordinance shall submit a scaled site plan and a scaled elevation view and other supporting drawings, calculations, and other documentation, signed and sealed by appropriated licensed professionals, showing the location and dimensions of all improvements, including information concerning topography, frequency coverage, tower height requirements, setbacks, drives, parking, fencing landscaping, adjacent uses, and other information deemed by the governing authority to be necessary to assess compliance with this ordinance.

3. **FACTORS CONSIDERED IN GRANTING SPECIAL EXCEPTION PERMITS.** The governing authority shall consider the following factors in determining whether to issue a Special Exception permit, although the governing authority may waive or reduce the burden on the applicant of one or more of these criteria if the governing authority concludes that the goals of this article are better served thereby.

- A. Height of the proposed tower
- B. Capacity of the tower structure for additional antenna equipment to accommodate expansion, or to allow for co-location of another provider's equipment
- C. Proximity of the tower to residential structures and residential district Boundaries
- D. Nature of uses on adjacent and nearby properties
- E. Surrounding topography
- F. Surrounding tree coverage and foliage
- G. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness
- H. Proposed ingress and egress
- I. Availability of suitable existing towers and other structures as discussed in Section 9.4 of this ordinance

4. **CO-LOCATION.**

- A. Any proposed telecommunications tower and tower site shall be designed, structurally, electrically, and in all respects to accommodate co-location of both the applicant's antenna (s) and comparable antenna

(s) for at least two additional users. Towers and tower sites shall be designed to allow for future rearrangement of antennas upon the tower, to accept antennas mounted at varying heights, and to accommodate supporting buildings and equipment.

- B. The holder of a permit for a tower, excepting amateur radio towers and sites, shall allow co-location for at least two additional users and shall not make access to the tower and tower site for additional users economically unfeasible. If additional user (s) demonstrate (through independent arbitrator or other pertinent means) that the holder of a tower permit has made access to such tower and tower site economically unfeasible, then the permit shall become null and void.
- C. No new tower, excepting amateur radio towers and sites, shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the governing authority that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:
 - I. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.
 - II. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
 - III. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - IV. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - V. The fees, costs, or contractual provisions required by the owner to share an existing tower or structure or to adapt an existing tower.
 - VI. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

5. SETBACKS AND SEPARATION. The following setbacks and separation requirements shall apply to all towers and antennas for which a Special Exception permit is required; provided, however, that the governing authority may, reduce the standard setbacks and separation requirements if the goals of this ordinance would be better served thereby.

- A. Towers must be set back a distance equal to the height of the tower from any off-site residential structure.

- B. Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.
 - C. In zoning districts other than Agriculture (AG) or Commercial (C), towers over ninety (90) feet in height shall not be located within one-quarter of a mile from any existing tower that is over ninety (90) feet in height.
6. LANDSCAPING. The following requirement shall govern the landscaping surrounding towers for which a Special Exception permit is required; provided, however, that the governing authority may waive such requirements if the goals of this ordinance would be better served thereby.
- A. Tower facilities shall be landscaped with a mixture of deciduous and evergreen trees and shrubs that effectively screens the view of the tower compound from adjacent properties. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
 - B. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether.
 - C. Existing mature trees 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.

SECTION 10 –REMOVAL OF ABANDONED ANTENNAS AND TOWERS

- 1. Any antenna or tower that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of such antenna or tower shall remove same within ninety (90) days of receipt of notice from the governing authority notifying the owner of such abandonment. If such antenna or tower is not removed within said ninety (90) days, the governing authority may remove such antenna or tower 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.

SECTION 11 – PENALTY PROVISION

General Penalty. Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:

- 1. First Offense – Penalty. Any person who shall violate any provision of this Ordinance shall, upon conviction thereof, forfeit not less than One Hundred (\$100.00) nor more than Three Hundred Dollars (\$300.00), together with the cost of prosecution including reasonable attorneys’ fees and, in default of payment of

such forfeiture and cost of prosecution including reasonable attorneys' fees shall be added to the property tax, with an interest rate, with interest, at the current interest rate charged for delinquent property taxes.

2. **Second Offense – Penalty.** Any person found guilty of violating any or part of this Ordinance who shall previously have been convicted of a violation of the same Ordinance within one (1) year shall, upon conviction thereof, forfeit not less than Three Hundred Dollars (\$300.00) nor more than One Thousand (\$1,000.00) for each such offense, together with the cost of prosecution including reasonable attorneys' fees and, in default of payment of such forfeiture and cost of prosecution including reasonable attorneys' fees, shall be added to the property tax, with interest, at the current interest rate charged for delinquent property taxes.
3. **Continued Violations.** Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.
4. **Other Remedies.** The Town shall have any and all other remedies afforded by the Wisconsin Statutes in addition to the forfeitures and costs of prosecution, including reasonable attorneys' fees above. The town board may seek injunctive relief from a court of record to enjoin further violations.

SECTION 12 – SEVERABILITY

Each of the provisions of the ordinance is severable and if any provision is held invalid for any reason, the remaining provisions shall not be affected but shall remain in full force and effect.

SECTION 13 – EFFECTIVE DATE

This Ordinance is effective on publication.

The town clerk shall properly post or publish this ordinance as required under s. 60.80, Wis. stats.

Adopted this 12th day of May, 2008.

Effective Date: May 30th, 2008

Fred Wollenburg, Chairman

Jan Banicki, Supervisor

Mary-Anne Raab, Supervisor

Attest: _____
Donna Seddon, Town Clerk