

**BENTON COUNTY ORDINANCE NO. 287**

WHEREAS, the Benton County Board of Commissioners instituted proceedings to amend Ordinance 185 as follows; and,

WHEREAS, on April 28, 1998 Notice of Public Hearing and intent to amend Benton County Ordinance 185, Section 11.3 was published in the official newspaper of the county; and,

WHEREAS, on May 14, 1998 the Benton County Planning Commission held a public hearing thereon and recommended to the Benton County Board of Commissioners that said amendments be approved; and,

WHEREAS, on May 19, 1998 the Benton County Board of Commissioners took official action to approve the proposed amendment.

NOW PURSUANT TO THE AUTHORITY VESTED BY MINNESOTA STATUTES SECTION 394.25, THE BENTON COUNTY BOARD OF COMMISSIONERS ORDAINS:

that Benton County Ordinance 185, be amended to include Section 11.3, Communication Tower Ordinance to read as follows:

9.13 COMMUNICATION TOWERS

9.13.1 TOWER DEFINITION

A communication tower is any pole, spire, structure, or combination thereof, including supporting lines, cables, wires, braces and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus, 50 feet or greater in height, above grade.

9.13.2 PURPOSE

The purpose of this section is to accommodate the communication needs of residents and businesses while protecting public health, safety and general welfare of the community. The County finds that these regulations are necessary in order to:

- A. Facilitate the provision of wireless communication services to residents and businesses;
- B. Minimize adverse visual effects of towers through careful design and site standards;
- C. Avoid potential damage to adjacent properties from tower failure; and;
- D. Maximize the use of existing and approved towers and buildings to accommodate new wireless communication antennas in order to reduce the number of towers needed to serve the community.

9.13.3

PERMITTED ZONING DISTRICTS

The construction and maintenance of a commercial tower shall be permitted within the zoning classification, I-1, I-2, A-1, A-2, B, B-2, pursuant to a conditional use permit granted in accordance with the Zoning Ordinance. Amateur radio, television towers and exempted dishes shall not require a conditional use permit.

For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any protected water or protected wetland or within two miles of the Mississippi River, Benton County is the RGU and an Environmental Assessment Worksheet is required before construction of the tower may be approved.

All applicants shall submit the following information upon application.

- A. A plan illustrating all known future location sites for communications towers and/or antennas.
- B. Legal description of the property
- C. Survey and/or general site plan of the tower and related facilities, as determined by the Planning Department
- D. One or more color computer generated photographs depicting the proposed tower located on the site.
- E. Written authorization by the owner of the land for the tower construction.
- F. A statement that affirmatively ensures that the use is consistent with any land use restrictions that apply to the site.

No land may be subdivided for the purpose of providing space for any antenna unless all lot size requirements for the relevant zoning district are met and subdivision approval is obtained.

Towers located within a five (5) mile radius of an FAA approved airstrip shall provide evidence of FAA consent.

Only one communication tower is permitted on a parcel of land. All other standards contained in this ordinance must be met.

9.13.4

GENERAL PERFORMANCE STANDARDS

The applicant shall submit a capacity analysis and coverage analysis, as required, prepared by a qualified radio frequency analysis, showing that the proposed tower site is necessary to meet the needs of the system, and that the tower cannot be located in a less restrictive district, or be accommodated by co-location on an existing tower or structure.

All towers shall meet the following performance standards:

- A. A proposal for a new commercial wireless communication tower shall not be approved unless the County finds that the telecommunications equipment plans for the proposed tower cannot be accommodated by an existing or approved tower or building within a one-half mile search radius of the proposed tower due to one or more of the following reasons:
1. The planned equipment would exceed the structural capacity of the existing or approved tower, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be re-enforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
  2. The planned equipment would cause interference materially impacting the useability of other existing or planned equipment at the tower as documented by a qualified and licensed professional engineer, and the interference cannot be prevented at a reasonable cost.
  3. Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonable as documented by a qualified and licensed professional engineer.
  4. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.

Any proposed commercial wireless telecommunication service tower shall be designed (structurally and electronically) in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users. The tower must be designed to allow for future re-arrangement of antennas upon the tower and to accept antennas mounted at various heights.

All towers shall be of a monopole design unless the Planning Commission or Count Board deems that an alternative design is necessary or preferred due to the

topography or to better blend with existing structures, for safety reasons, or if necessary to allow co-location.

The tower location shall provide full screening for the base for off-site views of the facility. Screening includes but is not limited to trees, set backs, and fences. Associated base equipment must be located within a structure whenever possible or housed at the base of the tower and screened from view for adjoining residents by fencing or landscaping. Tower accessory structures shall be constructed of materials designed to minimize visibility to surrounding areas. The Planning Commission reserves the right to require design measures to camouflage facilities by integrating them with existing buildings and other existing uses. Existing on-site vegetation shall be preserved to the maximum extent practicable.

All towers shall be constructed and maintained in accordance with the Electronic Industry Association Standards and all applicable building codes.

Minimum spacing between commercial tower locations is one-fourth (1/4) mile; except antennas wholly contained within a building or other structure and not visible to the general public shall be exempt from this spacing regulation.

All towers shall be reasonably protected against unauthorized climbing. The bottom of the tower from ground level to twelve (12) feet above ground shall be designed in a manner to preclude unauthorized climbing or shall be enclosed by a 6 foot fence with three strands of barbed wire at the top with a locked gate.

#### 9.13.5 TOWER SETBACKS

Setbacks from property lines must be equal to the height of the tower plus twenty (20) additional feet from the property line abutting the zone.

Buildings accessory to a tower shall comply with the setback requirements of the zone in which the tower is located.

Commercial towers shall be setback a minimum of one thousand (1,000) feet from schools or structures used as dwellings and a minimum of six hundred (600) feet from property zoned for residential use.

Towers and accessory structures shall be situated in the rear yard when located will another principal residential use, unless the Planning Commission finds that another location on the parcel is more appropriate.

#### 9.13.6 TOWER LIGHTING

A tower shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other state or federal authority for a particular tower. When incorporated into the design standards of the tower, light fixtures to illuminate ball fields, parking lots or similar areas may be attached to the tower. Antennas in the "Agricultural District" may be lighted to facilitate identification to low flying aircraft used for crop spraying.

9.13.7 SIGNS AND ADVERTISING

The use of any portion of a tower for signs other than a warning or equipment information signs is prohibited.

9.13.8 ABANDONED OR UNUSED TELECOMMUNICATION TOWERS

Abandoned, unused telecommunications towers or portions of telecommunications towers shall be removed as follows:

- A. All abandoned, unused towers and associated facilities shall be removed within twelve (12) months of the cessation of operations at the site unless a time extension is approved by the County.
- B. Any unused portions of towers above a manufactured connection shall be removed within six (6) months of the time of antenna relocation.

9.13.9 INTERFERENCE OF PUBLIC SAFETY COMMUNICATIONS

No new or existing telecommunication service shall interfere with public safety communications. All applications for a conditional use permit for new service shall be accompanied by an intermodulation study which provides the technical evaluation of existing and proposed transmission and indicates all potential interference problems. Before the introduction of a new service or change in existing service, telecommunication providers shall notify the County at least ten (10) calendar days in advance of such changes and allow the County to monitor interference levels during the testing process.

9.13.10 CONITIONAL USE APPLICATION SUBMITTAL

In addition to the information generally required to accompany a request for a conditional use permit as found in the Zoning Ordinance, applications for towers shall include the following supplemental information:

- A. A report from a qualified and licensed engineer which:

1. Describes the tower height and design, including a cross section and elevation;
  2. Documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distance between antennas;
  3. Describes the towers capacity, including the number and type of antennas it can accommodate;
  4. Describes how the applicant will take action to avoid interference with established public safety communication;
  5. Describes the lighting to be placed on the tower if such lighting is required by the FCC or FAA;
  6. Includes the engineer's stamp and registration number
  7. Includes other information necessary to evaluate the request.
- B. Letter of intent committing the tower owner, and successors, to allow the shared use of the tower if any additional user agrees in writing to meet reasonable terms and conditions for shared use.
- C. Proof that the proposed tower complies with regulations administered by the Federal Aviation Administration.
- D. A report from a qualified and licensed professional engineer which demonstrates the tower's compliance with all applicable structural and electrical standards.
- E. A site plan showing the boundaries of the property on which the tower is located, adjacent land uses, the location of the tower and any accessory buildings within the property, distance setbacks from property lines for the tower and accessory buildings, fence locations, and proposed landscaping or screening.
- F. Proof of insurance against injury and property damage.

#### 9.13.11 BUILDING MOUNTED ANTENNAS

An antenna is defined as any device consisting of a metal, carbon fiber, or other electromagnetically conductive rods or elements on a single supporting pole or other structure, and used for the transmission and reception of wireless communication radio waves including cellular, personal communication services

(PCS), enhanced specialized mobilized radio (ESMR), paging and similar services and including the wiring, related ground equipment and the support structure thereof.

The placement of a wireless telecommunication antennas on roofs or walls of existing buildings or structures may be approved by the County as a conditional use provided that the antennas meet the requirements of this ordinance, after submittal of a final site and building plan, and a report prepared by a qualified licensed professional engineer indicting the existing building structure suitability to accept the antenna as well as a proposed method for affixing the antenna to the structure. Complete details of all fixtures, couplings, and the precise point of attachment shall be indicated.

The antennas shall be located on an existing structure, if possible, and shall not extend more than fifteen (15) feet beyond the height of the structure to which they are attached.

The structural design, mounting, and installation of any antenna and support structure shall be in compliance with the manufacturer's specifications. The construction plans and design of any antenna requiring a permit shall be approved and certified by a registered professional engineer.

All obsolete and unused antenna shall be removed within twelve (12) months of cessation of use, unless a written exemption is granted by the Zoning Administrator.

All antenna shall be in compliance with all Federal, State and local building, electrical and other relevant code requirements.

No advertising message nor identification shall be affixed to any antenna structure.

Antennas shall not be artificially illuminated unless required by law or by a governmental agency to protect the public health and safety. Guy wires or guy wire anchors shall not be erected within public or private utility and drainage easements, and shall be set back a minimum of five (5) from all lot lines. Guy wires within ten feet of the ground surface must be fenced within an enclosure or maintained with a cover of highly reflective material to prevent accidental collision.

When applicable, proposals to erect new antenna shall be accompanied by any required federal, state, or local agency licenses or proof of application thereof.

Antenna support structures under two hundred (200) feet in height shall be painted or coated silver or have a galvanized finish to reduce visual impact, unless

otherwise required by federal law. Silver or galvanized finishes shall be required unless the setting or natural surroundings can be used to justify another color.

No land may be subdivided for the purpose of providing space for any antenna unless all lot size requirements for the relevant zoning district are met and subdivision approval is obtained.

9.13.12 AMATEUR RADIO TOWERS

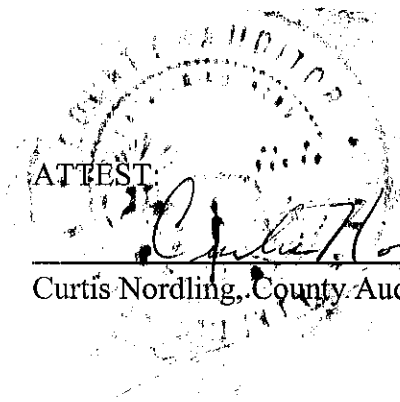
Amateur radio and television towers and antennas are subject to the standards and conditions established by this ordinance, except for those specific to commercial towers.

9.13.13 PROHIBITED USES

1. No tower or accessory structure shall be erected in any public or private drainage easements.
2. No temporary mobile cell sites are permitted except in the case of equipment failure, equipment testing, or in the case of emergency situation as authorized by the County Zoning Administrator. Use of temporary mobile cell sites for testing purposes shall be limited to twenty-four (24) hours, use of temporary mobile cell sites for equipment failure or in the case of emergency situations shall be limited to a term of thirty (30) days. These limits can be extended by the Zoning Administrator.
3. Permanent platforms or structures, exclusive of antennas, other than those necessary for safety purposes or for tower maintenance are prohibited.

This Ordinance amendment shall be effective May 19, 1998.

APPROVED AND ADOPTED by the Benton County Board of Commissioners this 19<sup>th</sup> day of May in the year of 1998.

ATTEST:  
  
Curtis Nordling  
Curtis Nordling, County Auditor

Al Seppelt  
Al Seppelt, Chair  
Benton County Board of Commissioners

SEAL: BY C. Nordling  
MAY 21 1 45 PM '98  
OFFICE OF  
BENTON COUNTY RECORDER  
BENTON COUNTY, MN  
CERTIFIED TO BE FILED  
AND/OR RECORDED ON

249415