

Chapter 57

COMMUNICATION TOWERS

[HISTORY: Adopted by the Town Board of the Town of Scott 8-4-2003. Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision of land — See Ch. 308.

Zoning — See Ch. 375.

ARTICLE I

General Provisions

§ 57-1. Title.

This chapter shall be known as the "Town of Scott Communication Tower Ordinance," hereinafter referred to as "this chapter."

§ 57-2. Authority.

This chapter is adopted pursuant to the authority granted by the United States Congress, Federal Telecommunications Act of 1996.

§ 57-3. Applicability; exemptions.

- A. This chapter shall be in effect in the unincorporated areas of the Town of Scott.
- B. The following are exempt from this chapter:
 - (1) Towers and masts for television antennas and other receive-only antennas, provided that the primary use of the property is not a communication tower facility and that the antenna use is accessory to the primary use of the property.
 - (2) Towers and masts for amateur radio antennas that are owned and/or operated by a federally licensed amateur radio operator.¹
 - (3) Mobile communication towers and masts providing public information coverage of news events of a temporary or emergency nature.

§ 57-4. Purpose.

The purposes of this chapter are to:

¹. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- A. Provide a uniform and comprehensive set of standards for the development and installation of communication towers and related facilities.
- B. Protect and promote public health, safety, and community welfare of the Town of Scott, while at the same time not unduly restricting the development of needed communication towers.
- C. Minimize adverse visual effects of communication towers by minimizing their number.
- D. Provide a process for obtaining necessary permits for communication towers.
- E. Protect environmentally sensitive areas of the Town of Scott by regulating the location of communication towers.

§ 57-5. Compliance required.

No communication tower shall be installed except in full compliance with this chapter and after all permits have been obtained.

§ 57-6. Effect on existing ordinances.

It is not intended by this chapter to repeal, abrogate, annul, impair, or interfere with any existing ordinance.

§ 57-7. Warning and disclaimer of liability.

This chapter shall not create a duty or liability on the part of or a cause of action against the Town of Scott, its officers or employees thereof for any damages that may result from administration of or reliance on this chapter.

ARTICLE II
Definitions

§ 57-8. Terms defined.

In this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

ALTERNATIVE SUPPORT STRUCTURE — Clock towers, steeples, silos, light poles, water towers, electric transmission towers, wind turbine towers, buildings, or similar structures that may support antennas.

ANTENNA — Any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to a structure. Antennas shall include devices having active or passive elements extending in any direction, and directional-beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be part of the antenna.

BUILDING — Any structure having a roof 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.

CAMOUFLAGED TOWER — Any communication tower that, due to design or appearance, entirely hides, obscures, or conceals the presence of the tower and antennas.

COMMUNICATION TOWER — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including camouflaged towers, lattice towers, guy towers, or monopole towers.

COMMUNICATION TOWER SUPPORT FACILITY — Equipment buildings, utilities, and equipment enclosures.

GUY TOWER — A communication 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.

HEIGHT (OF THE COMMUNICATION TOWER) — The distance measured from the original grade at the base of the tower to the highest point of the tower, including appurtenances, such as attached antennas, protection devices (e.g., lightning rods), and lights.

LATTICE TOWER — A communication tower that consists of vertical and horizontal supports and crossed metal braces.

MONOPOLE — A communication tower of a single pole design.

NAVIGABLE WATER — The Bay of Green Bay, all natural inland lakes, all streams, ponds, sloughs, flowages and other waters within the Town of Scott which are navigable under the laws of the State of Wisconsin.

ORDINARY HIGH WATER MARK — The landwardmost line along the bank of the shore of navigable water up to which the presence and action of surface water is so continuous as to leave a distinct mark on the shore. Such distinct mark may be the result of erosion, cobble deposition, water staining, destruction of terrestrial vegetation, total or virtual absence of terrestrial vegetation, and/or other easily recognized characteristics.

PROVIDER — Any company that builds and operates communication facilities and services, whether or not licensed by the Federal Communications Commission.

ARTICLE III **Location**

§ 57-9. Permitted locations.²

Communication towers will be allowed as conditional uses only in General Business, Limited Industrial, Exclusive Agriculture, and Agricultural Zoning Districts as specified in Chapter 375, Zoning, of the Code of the Town of Scott, or as amended.

². Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

§ 57-10. Prohibited locations.

No communication towers, except those exempted under § 57-3B, shall be permitted in all other zoning districts in the Town of Scott and:

- A. Floodplains.
- B. Historic sites and districts listed on the National Register of Historic Places.

ARTICLE IV
Permit Procedure

§ 57-11. Permit required. ³

No communication tower shall be constructed or installed, enlarged or renovated without a communication tower permit as required under this chapter. All such permits shall also be issued and reviewed in conformance with the procedures outlined in Chapter 375, Zoning, § 375-78, Conditional uses.

§ 57-12. Permit application. ⁴

An application for a communication tower permit under this chapter shall be submitted by the applicable property owner to the Clerk/Treasurer. The application shall consist of a letter addressed to the Clerk/Treasurer requesting a communication tower permit under this chapter and attachments to the letter as necessary to provide the following:

- A. The name, address, telephone number, and original signature of the property owner.
- B. A site plan, drawn at a scale that produces a clearly legible drawing, showing the parcel boundaries, communication tower location, the NAD 83 latitude and longitude coordinates for the proposed tower, communication tower support facilities location, access, landscaping, scale, North arrow, and a written legal description of the parcel.
- C. In the case of a leased site, a lease agreement. Additionally, the lease agreement shall show that the tower owner may enter into agreement with competing providers for antenna space on the tower.
- D. Evidence of Federal Communications Commission approval of the proposed communication tower.
- E. An alternatives analysis that identifies all feasible alternative locations and alternative support structures that could provide the proposed communication service. The purpose of the alternatives analysis is to seek alternative solutions in order to minimize the number of communication towers by using existing communication towers and alternative support structures, if feasible, to provide the needed services to the Town of Scott. The analysis shall address the potential for collocation of antennas. It shall explain the rationale for selection of the proposed

³. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

⁴. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

site in view of the relative merits of any of the feasible alternatives. It shall also explain the rationale for not utilizing collocation opportunities.

- F. A report prepared by an engineer licensed by the State of Wisconsin certifying to the adequacy of the structural strength of the tower and its ability to accommodate additional antennas.
- G. An affidavit that commits the applicant to making space available on the proposed tower for at least six providers, even for those providers providing competing services.

§ 57-13. Application fee. ⁵

A nonrefundable fee of \$50 shall accompany an application for a communication tower permit. See also the Conditional Use Permit Fee Schedule.

§ 57-14. Technical review. ⁶

After determining that all application materials have been satisfactorily submitted, the Town of Scott shall employ an independent technical expert to review the submitted materials. The applicant shall pay all the costs of such review. Payment to the Town of Scott Clerk/Treasurer shall be due upon receipt of the invoice. All invoices, fees, and charges accumulated for the technical review must be paid in full prior to the Town of Scott's determination regarding issuance or denial of a communication tower permit.

§ 57-15. Grant of permit.

- A. The Town of Scott Plan Commission shall grant preliminary approval of a communication tower permit if the Plan Commission determines:
 - (1) That a need for a communication tower has been demonstrated. Supporting evidence of need for a new communication tower shall consist of any of the following conditions:
 - (a) No existing suitable communication towers or alternative support structures are located within the geographic area required to meet the applicant's engineering requirements.
 - (b) The applicant's proposed system will not cause electromagnetic interference with the system on an existing communication tower or alternative support structure, or an existing system will not cause electromagnetic interference with the proposed system.
 - (c) The fees, costs, or contractual provisions required by the applicant to share an existing communication tower or alternative support structure or to adapt an existing tower or alternative support structure for sharing are unreasonable. Costs are considered reasonable if they conform to

⁵. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

⁶. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

contractual terms standard in the industry within the northeastern Wisconsin area or if they do not exceed the cost of new communication tower development.

(d) The applicant demonstrates that there are other limiting factors that render existing communication towers or alternative support structures unsuitable.

(2) That the requirements of Article V are met.

B. The Plan Commission shall consider the following factors in determining whether to grant a communication tower permit, although the Plan Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Plan Commission concludes that the goals of this chapter are better served thereby:

(1) Height of the proposed tower.

(2) Proximity of the tower to residential structures and residential district boundaries.

(3) Nature of uses on adjacent and nearby properties.

(4) Surrounding topography.

(5) Surrounding tree cover and foliage.

(6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

(7) Proposed ingress and egress.

§ 57-16. Submittals required following preliminary approval.

The applicant shall submit the following before a communication tower permit will be issued:

A. A copy of a determination of no hazard to air navigation from the Federal Aviation Administration and a statement of nonobjection from the Wisconsin Department of Transportation.⁷

B. Proof of a performance bond as security for removal, as specified in Article VIII.

ARTICLE V
Tower and Support Facility Requirements

§ 57-17. Tower requirements.

A. Communication towers shall be constructed out of nonflammable material and shall be nonreflective gray in color, unless other colors are required by the Federal

⁷. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

Aviation Administration, Wisconsin Department of Transportation, or other applicable regulatory authority.⁸

- B. Communication towers shall not interfere with or obstruct existing or proposed public safety, fire protection, or Supervisory Controlled Automated Data Acquisition (SCADA) communication systems. The applicant, at no cost to the Town of Scott, shall correct any actual interference and/or obstruction.

§ 57-18. Lighting.

- A. Communication towers shall not be artificially lighted unless required by the Federal Aviation Administration, Wisconsin Department of Transportation, or other applicable regulatory authority. If artificial lighting is required, such lighting shall not include white flashing lights during nighttime.⁹
- B. Lighting, if any, of communication tower support facilities shall utilize lighting fixtures whose hood, lens, or combination thereof allows no direct beams of light from the fixture to be seen from off the property or to be cast skyward.

§ 57-19. Support facilities.

- A. Communication tower support facilities shall be constructed out of nonreflective materials (visible exterior surfaces only).
- B. Communication tower support facilities shall not exceed 15 feet in height, measured from the original grade at the base of the facility to the top of the structure.

§ 57-20. Site development, driveway and access.

- A. The minimum land area devoted to placement of a communication tower and communication tower support facilities shall be either of the following:
 - (1) If a leased site, the minimum land area shall be that necessary to accommodate the setbacks specified in § 57-24.
 - (2) If an owned site, the minimum land area shall be as specified in Subsection A(1) or the minimum lot area requirement for the applicable zoning district as specified in Chapter 375, Zoning, of the Town Code, or as amended, whichever is greater.
- B. All sites must be served by a maximum fifteen-foot-wide access driveway with a turnaround of the minimum size necessary to provide maneuverability for service and emergency vehicles.
- C. All communication tower sites shall use existing access points and roads whenever possible. Sites that abut two or more public roads shall gain access from the lowest

⁸. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

⁹. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

class road, regardless of driveway length. The applicant shall seek and obtain approval for access from the entity having jurisdiction over the road.

§ 57-21. Security.

All communication towers and communication tower support facilities shall be reasonably protected against unauthorized access.

§ 57-22. Screening and landscaping.

- A. The site shall be landscaped and maintained with a buffer of plant materials that effectively screen the view of all communication tower support facilities at ground level to a height of eight feet. The minimum buffer shall consist of a landscaped strip at least six feet wide outside of the communication tower support facilities.
- B. Where the visual impact of the communication tower support facilities would be minimal because of existing vegetation, the landscaping requirement specified in Subsection A may be reduced or waived by the Town of Scott Plan Commission. If a waiver is granted, the existing vegetation shall be preserved with at least the amount of vegetation specified in Subsection A.
- C. The owner(s) of the communication tower shall be responsible for maintenance and replacement of all required landscaping.

§ 57-23. Noise.

Backup generators shall be operated only during power outages and for testing and maintenance purposes.

§ 57-24. Setbacks.

Setbacks are based on Chapter 375, Zoning, for the districts in which the tower is located, with other constraints as determined by the Plan Commission, per § 57-15B.

- A. Communication towers and communication tower support facilities shall be located a distance at least equal to 100% of the height of the communication tower from:
 - (1) All property lines of owned sites and all boundaries of leased sites.
 - (2) The ordinary high water mark or 75 feet, whichever is greater.
- B. Guy wire anchor setback. The minimum setback from all property lines and all boundaries of leased sites for guy wire anchors shall be the side yard requirement for accessory structures in the applicable zoning district as specified in Chapter 375, Zoning, or as amended.

- C. The setbacks required may be reduced for a proposed communication tower, conditioned on the applicant providing an acceptable "fall zone" letter and illustration to the Town prior to review by the Plan Commission.¹⁰

§ 57-25. Signs.

A sign giving warning of the danger from electrical equipment and unauthorized climbing of the tower and identifying the owner of the tower and telephone number for contact in case of emergency shall be installed adjacent to communication towers and communication tower support facilities. The sign shall be no larger than six square feet. No commercial advertising signs shall be located on communication towers or communication tower support facilities.

ARTICLE VI
Transferability

§ 57-26. Permits transferable.

All communication tower permits issued under this chapter shall be transferable to subsequent owners of applicable property or communication towers. All subsequent holders of such permits shall be subject to all applicable requirements of this chapter and any permit conditions that may exist.

§ 57-27. Transfer of property or tower ownership.

A written notice of property transfer or communication tower ownership transfer shall be provided to the Town of Scott Zoning Administrator within 30 days of the transfer.

ARTICLE VII
Annual Information Report

§ 57-28. Purpose.

The purpose of the annual information report is to provide the Town of Scott with accurate and current information regarding communication towers so as to assist the Town of Scott in monitoring compliance with the requirements of this chapter.

§ 57-29. Report required; information; penalty.

- A. All communication tower owners shall submit to the Town of Scott Zoning Administrator on or before January 31 of each year an annual information report. The annual information report shall include the tower owner's name, address, telephone number, contact persons, and proof of bond as security for removal. The annual information report shall include a tabular and map inventory of all of the owner's communication towers that are located within the Town of Scott and within 1,500 feet of the Town boundary. The inventory shall specify the location, height,

¹⁰. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

type, use, and design of each communication tower, and the ability of the tower to accommodate additional antennas.

- B. Failure to timely submit a complete report may result in suspension of the communication tower permit and/or a monetary penalty.

ARTICLE VIII Ceased Operations

§ 57-30. Restoration.

Any communication tower that is not actively energized and operating for its intended purpose for one year, excluding time spent on repairs or improvements, shall be considered as having ceased operation. Within six months of the tower owner being notified that a communication tower is considered to have ceased operation, the communication tower shall be removed from the property and the property cleaned up as herein required:

- A. All communication towers and aboveground improvements shall be removed from the property.
- B. All items in outdoor storage shall be removed from the property.
- C. All building foundations, tower pads, guy wire anchor pads, and buried electrical improvements shall be removed, including all improvements below the ground surface. All excavated areas shall be filled in with unconsolidated soil material, of which the top four inches or more shall be topsoil. The excavated area shall be made level with the ground surface surrounding the excavated area.
- D. Any hazardous material, either in containers or spilled upon or in the ground, shall be removed and disposed of in a manner prescribed by applicable state and federal law.

§ 57-31. Security for removal.

The communication tower owner shall provide to the Town of Scott a continuously valid performance bond for each tower in the amount of \$20,000 or a bond equal to a written estimate from a qualified tower removal contractor to guarantee that the communication tower will be removed when no longer in operation. The Town of Scott will be named as "beneficiary" in the bond and must approve the bonding company.

ARTICLE IX Administration and Appeals

§ 57-32. Administration.

The Town of Scott Plan Commission, a duly authorized commission appointed by the Town of Scott Board, shall be empowered to administer this chapter, issue communication tower permits as appropriate under this chapter, and to perform all other duties within the scope of this chapter.

§ 57-33. Appeals.

Any person aggrieved by a decision of the Town of Scott Plan Commission in the administration of this chapter shall appeal the decision to the Circuit Court for review.

**ARTICLE X
Enforcement**

§ 57-34. Violations.

It shall be unlawful to construct, install, reconstruct, substantially repair, improve, extend, enlarge, relocate, or convert any communication tower or communication tower support facility in violation of the provisions of this chapter. It shall also be unlawful to fail to obtain a communication tower permit.

§ 57-35. Enforcement methods.

The Town of Scott Plan Commission may enforce this chapter by any lawful enforcement method deemed appropriate and necessary.

§ 57-36. Penalties.

Any person, firm, association, corporation, or representative agent who or which fails to comply with the provisions of this chapter shall, upon conviction thereof, forfeit not less than \$500 nor more than \$10,000 for each day of continued violation. The Town of Scott shall also be entitled to other relief, including a temporary or permanent injunction, costs, and reasonable attorney fees.

§ 57-37. Nonexclusivity.

Adoption of this chapter does not preclude the Town of Scott from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same matter.