

CHAPTER 186
WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES

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PURPOSE.

- (a) It is the purpose of this section of the Bainbridge Township Zoning Resolution in addition to the purposes as set forth in Section 101.02, to regulate wireless communications antennas, towers and facilities in order to promote public health, safety, and general welfare of the community. Accordingly, the regulations and conditions set forth herein are warranted and necessary to:
- (1.) Protect residential districts and land uses from potential adverse impacts of wireless telecommunications towers and facilities;
 - (2.) Accommodate telecommunications towers and facilities as directed by the Federal Telecommunications Act of 1996, Public Law 104-104, to enhance telecommunications services and competition, and particularly wireless telecommunications service;
 - (3.) To promote collocation as an alternative to siting new telecommunications towers and appurtenances; and to maximize the use of existing and approved towers, and buildings to collocate new wireless telecommunications antenna(s). The Board of Zoning Appeals is encouraged to consider requests that promote collocation;
 - (4.) To consider the public health and safety issues surrounding telecommunications towers and appurtenances;
 - (5.) To protect adjacent properties from potential damage through careful siting of such structures; and,

- (6.) To encourage, where possible, "stealth" applications for proposed telecommunications towers within the township. Monopole construction is preferred where possible.
- (b) This resolution shall not discriminate among providers of functionally equivalent services nor shall it prohibit or have the effect of prohibiting the provision of personal wireless services. Any requests for authorization to place, construct, or modify personal wireless service facilities shall be acted upon within a reasonable period of time after the request has been duly filed. Any decision to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. This resolution shall not regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's (FCC) regulations concerning such emissions.
- (c) A "telecommunications tower" shall have the same meaning as in O.R.C. 519.211(B)(1) and Section 105.02.

186.02 PERMITTED USES.

A wireless telecommunication facility may be located in the following areas, under the following circumstances and requirements of this Chapter 186 and upon application for a zoning certificate and issuance of such certificate from the zoning inspector.

- (a) The erection, construction or replacement of a wireless telecommunication antenna(s) on a lawfully existing tower with the necessary equipment building may be a permitted use as a collocation on such existing wireless telecommunications tower and facility.
- (b) A wireless telecommunications tower facility may be located in Light Industrial Restricted (LIR) and Mixed Use Planned Unit Development districts.
- (c) A wireless telecommunications tower facility may be located within a recorded electric high tension power line easement. A tower located within such an easement shall not be subject to the standards set forth in 186.05 (c), and (p).
- (d) A wireless telecommunications tower facility may be located within the U.S. Route 422 right-of-way, subject to approval by the Ohio Department of Transportation.
- (e) The owner of a tower permitted under this section shall respond within thirty (30) days to requests for collocation and allow collocation unless it is demonstrated to be technically nonfeasible.

186.03 CONDITIONAL USES.

A wireless telecommunications facility may be located in a Convenience Business District (CB), a Light Industrial Restricted District (LIR), or in a residential district used for existing nonresidential purposes including schools, churches, parks, and facilities owned by a political subdivision of the State of Ohio as a conditional use upon the approval of the Zoning Board of Appeals, provided the applicant demonstrates compliance with the following conditions.

- (a) There is no technically suitable space for the applicant's antenna(s) and related facilities reasonably available on an existing tower or structure within the geographic area to be served, including the areas set forth in 186.02. With the zoning certificate application, the applicant shall list the location of every tower, building or structure and all the areas set forth in section 186.02 that could support the proposed antenna(s) so as to allow it to serve its intended function and demonstrate the location of every tower, building or structure and demonstrate that a technically suitable location is not reasonably available on an existing tower building or structure or a technically suitable location is not available in any area set forth in 186.02. If another tower, building or structure, or area set forth in 186.02 is technically suitable, the applicant must show that it has requested to collocate on the existing tower and the collocation was rejected by the owner of the tower, building or structure or that it has requested all property owners with technically suitable locations within a two (2)-mile radius to permit it to locate a tower facility in all technically suitable area(s) set forth in 186.02 under reasonable terms and that each request was rejected. In all circumstances, owners of existing towers shall promptly respond to request for collocation within thirty (30) days from the receipt of a written request for collocation. This request shall be in the form of a certified letter, return receipt requested, and copies shall be included with the application. If another telecommunications tower is technically suitable the applicant must further show that it has offered to allow the owner of that other tower to collocate an antenna(s) on another tower within the Township, if such a tower exists and space is available on the tower for collocation, which is owned or controlled by the applicant on reasonable reciprocal terms and the offer was not accepted. In all cases, the Township shall use its best efforts to encourage collocation; and
- (b) As a condition of issuing a conditional zoning certificate to construct and operate a tower in the Township, the owner/operator of the telecommunications tower is required to allow collocation for a minimum of two (2) additional antenna platforms of equal loading capacity for two (2) additional unrelated owners/operators. Agreement to this provision must be included in the applicant's lease with the landowner, if different from the owner/operator of the tower. Written documentation must be presented to the Zoning Inspector evidencing that the landowner of the property on which the tower is to be located has agreed to the terms of this Subsection as well as all other applicable requirements, regulations and standards set forth in Chapter 186.

186.04 PROHIBITED AREAS.

Except as noted in 186.03, telecommunications towers, antennas, and facilities are prohibited in residential districts.

186.05 GENERAL REGULATIONS.

The regulations and conditions set forth in this resolution shall apply with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower and all appurtenances. Except for otherwise provided in this Chapter, all wireless telecommunication tower facilities shall comply with the following regulations:

- (a) No telecommunications tower, equipment building, or appurtenant facility shall be located within a designated 100 year flood plain as depicted on the maps published by the Federal Emergency Management Agency for Geauga County.
- (b) No telecommunications tower, equipment building, or appurtenant facility shall be located within a jurisdictional wetland as specified by the Federal Government and its agencies.
- (c) A security fence not less than eight (8) feet in height shall fully enclose the base of the telecommunications tower, the equipment building, and appurtenant facilities including anchors for gate wires. Gates shall be locked at all times.
- (d) A report shall be prepared and submitted by a licensed professional engineer and shall provide proof of certification of compliance with all applicable federal, state, and county building regulations. The report shall include a detailed site plan; a detailed description of the telecommunications tower, equipment shelter, and appurtenances as well as the tower's capacity. The owner/operator shall demonstrate compliance with the ANSI/EIA 222-F manual verifying the design and construction specifications for the tower; shall demonstrate that the tower is the height necessary for its operation and at least two other companies' to allow co-hosting; and shall verify that radio frequency (electromagnetic) emissions are within compliance with the regulations of the Federal Communications Commission (FCC).
- (e) A telecommunications tower, equipment shelter, and appurtenances shall not be mounted on a building or structure listed on the National Register of Historic Places.
- (f) No advertising sign(s) shall be permitted anywhere on a telecommunications tower, equipment shelter, and appurtenances or on the site.
- (g) Warning signs and an emergency telephone number shall be posted on the site. The applicant shall also provide the fire department, the township police department, and the county emergency management agency with information on whom to contact, an address, and a telephone number in the event of an emergency.
- (h) A telecommunications tower, equipment shelter, and appurtenances shall have minimum lighting necessary for security reasons or as may be required by the Federal Aviation Administration (FAA) in accordance with Chapter 161.12.
- (i) The applicant shall submit a plan documenting how the telecommunications tower, equipment shelter, and appurtenances will be maintained on the site.

- (j) The driveway to the site shall be a minimum of ten (10) feet in width and shall be set back a minimum of two (2) feet from the side or rear lot line. There shall be a minimum of one (1) off-street parking space on the site.
- (k) A proposal for a new commercial wireless telecommunications service tower shall not be approved unless the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a two mile search radius due to one or more of the following reasons:
 - (1.) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - (2.) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building 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 reasonably as documented by a qualified and licensed professional engineer.
 - (4.) Technical limitations including a violation of federal, state, or county regulations.
 - (5.) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
- (l) Any proposed commercial wireless telecommunication service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
- (m) The owner of any tower erected under this section shall be required to accept collocation of any other antenna(s), except upon a showing of technological nonfeasibility, as delineated under sub-paragraph (k) (1)(2) (3) (4) or (5) herein.
- (n) There shall be no storage outside of the security fence of equipment or other items on the site.

- (o) If at any time the use of the telecommunications tower, equipment building, and appurtenances is discontinued for two (2) years or more, said facilities shall be deemed abandoned. The zoning inspector shall notify the applicant in writing by certified mail, return receipt requested and advise that the facility must be reactivated within 30 days or it must be dismantled and removed from the site at the cost of the owner or lessee. If reactivation or dismantling does not occur, the conditional zoning certificate for the site shall expire on the 91st day. During any period of discontinuance of said telecommunications facility, the owner/operator shall be responsible for the exterior maintenance of all equipment, appurtenances and landscaping. The subject property shall at times be kept in good repair.
- (p) A landscaped buffer area of not less than fifteen (15) feet in depth shall be placed between the security fence surrounding the wireless telecommunications facilities and the public rights-of-way and any adjacent properties from which a direct view can be had of the facilities, other than the tower itself. The fifteen (15)-foot landscaped buffer shall have a tight screen fence of hardy evergreen shrubbery not less than six (6) feet in height. The landscaping shall be continuously maintained and promptly restored, if necessary.
- (q) The minimum distance between a telecommunication tower and buildings and air-supported structures where people reside or conduct business located off the lot the tower is located on shall be one hundred ten percent (110%) of the height of the tower.
- (r) The owner/operator of a wireless telecommunication tower shall notify the Township fire department by certified mail of the location and height of the proposed tower as a condition of the issuance of a zoning certificate.
- (s) After issuance of a zoning certificate to construct a wireless telecommunications facility, the applicant shall commence construction within one hundred eighty (180) days and shall complete construction within one (1) year or the zoning certificate shall expire.
- (t) Towers shall not be located between a principal structure and a public street, with the following exceptions:
 - (1) In LIR zoning districts, towers may be placed within a side yard abutting an internal industrial street.
 - (2) On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.
- (u) The maximum height of a telecommunications tower, antenna, and appurtenances shall be one hundred and ninety-five (195) feet.
- (v) Supports or anchors for any guy wires shall be set back a minimum of twenty (20) feet to the nearest lot line or road right-of-way.

- (w) The maximum size of an equipment shelter accessory to a telecommunications tower or antenna shall be two hundred and fifty (250) square feet per carrier. Maximum height shall be twelve (12) feet above ground.
- (x) A telecommunications tower, antenna, equipment building, and appurtenances shall comply with all of the regulations for the zoning district in which it is located, except as may otherwise be specified in this Section of the zoning resolution.

186.06 FEES.

(a) In addition to general application fees, the applicant for a wireless telecommunications tower and/or antenna facility shall be responsible for all expenses incurred by the Township or any technical and/ or engineering services deemed necessary by the Zoning Inspector, the Board of Zoning Appeals, or the Board of Township Trustees to perform the reviews and/or inspections set forth in this chapter.

PUBLIC UTILITY EXEMPTION.

- (a) Subject to R.C. 519.211(B)(4)(a) and set forth in Chapter 186 of this Resolution, the provisions of this Resolution shall apply with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use or enlargement of a wireless telecommunications facility.
- (b) In the event a wireless telecommunications tower facility will be owned by a public utility engaged in the provision of telecommunication services, the regulations of this Chapter 186 do not apply when the proposed location of the tower facility is in a non-residentially zoned area of the township. The proponent of such a tower facility must file a written application with the Zoning Inspector supported in writing, evidence that the tower will be owned by a public utility engaged in the provision of telecommunication services. The applicant must also demonstrate that it possesses a sufficient degree of the following attributes associated with being a public utility to be considered a "public utility" for the purpose of this exemption:
 - (1.) Whether the applicant devotes an essential good or service to the general public which has a legal right to demand or receive this good or service;
 - (2.) Whether the applicant provides its good or service to the public indiscriminately and reasonably;
 - (3.) Whether the applicant has an obligation to provide the good or service which cannot be arbitrarily or unreasonably withdrawn;
 - (4.) Whether the applicant conducts its operations in such a manner as to be a matter of public concern;

- (5.) Whether the good or service is vital;
- (6.) Whether there is a lack of competition in the local marketplace for the good or service;
- (7.) Whether there is regulation by a government authority and the extent of that regulation;
- (8.) Whether the applicant possesses the power of eminent domain.

No single factor set forth above is controlling as to whether the applicant is a "public utility engaged in the provision of telecommunications services". Each factor should be considered and weighed according to the factual circumstances presented and, in specific circumstances, some factors may be given more weight than others.

- (c) If the Zoning Inspector determines to deny the applicant such "public utility" status, the Inspector shall do so in writing, and state the reasons therefor. Such decision of denial by the Zoning Inspector shall not be a final decision by the Township on the issue. Any determination by the Zoning Inspector that the applicant is not a public utility engaged in the provision of telecommunications services shall be appealable to the Board of Zoning Appeals pursuant to the procedures set forth in this Zoning Resolution. The decision of the Board of Zoning Appeals shall be the final decision of the Township on this issue.
- (d) In the event a wireless telecommunications tower facility is proposed to be located in an area zoned for residential use, and is to be owned or principally used by a public utility engaged in the provision of telecommunications services, the public utility shall be exempt from the requirements of this Zoning Resolution if it meets all of the criteria in 1, 2, and 3 below as follows:
 - (1.) All requirements of Subsection 186.07 (a) through (c) are met;
 - (2.) The public utility provides both of the following by certified mail:
 - a. Written notice to each owner of property, as shown on the County Auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed, stating all of the following in clear and concise language:
 1. The public utility's intent to construct the tower; and
 2. A description of the property sufficient to identify the proposed location; and

3. That no later than fifteen (15) days after the date of mailing of the notice, any such property owner may give written notice to the Board of Township Trustees requesting that the provisions of this Zoning Resolution apply to the proposed location of the tower. If the notice to a property owner is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice; and
 - b. Written notice to the Board of Township Trustees of the information specified in Subsection (d).(2).(a). of this section; and
- (3.) If the Board of Township Trustees receives notice from a property owner under Subsection (d).(2).(a). (3) of this Section within the time specified in that Subsection, or if a Trustee makes an objection to the proposed location of the telecommunications tower within fifteen (15) days after the date of mailing of the notice sent under Subsection (d).(2).(b). of this Section, the board shall request that the fiscal officer of the township send the person proposing to construct the tower written notice that the tower is subject to the regulations of this Zoning Resolution. The notice shall be sent no later than five (5) days after the earlier of the date the Board of Trustees first receives such a notice from a property owner or the date upon which a Trustee makes an objection. Upon the date of mailing of the notice to the person, the provisions of this Zoning Resolution shall apply to the tower without exception. If the Board of Township Trustees, however, receives no notice under Subsection (d).(2).(a). of this Section within the time prescribed by that Subsection or no Trustee has an objection as provided under this Subsection (d).(3). within the time prescribed by this Subsection, the applicant will be exempt from the regulations of this Zoning Resolution.
 - (4.) Any person who plans to construct a telecommunications tower within one hundred (100) feet of a residential dwelling shall provide a written notice to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner, in accordance with O.R.C. 519.211(E).

<p>186.08 ADDITIONAL INFORMATION REQUIRED.</p>

- (a) In addition to the information required elsewhere in this resolution, development applications for towers shall include a report from a qualified licensed professional 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 co-located antennas and the minimum separation distances between antennas;

- (3.) describes the tower's capacity, including the number and type of antennas that it can accommodate;
- (4.) documents what steps the applicant will take to avoid interference with established public safety telecommunication;
- (5.) includes an engineer's stamp and registration number; and,
- (6.) includes other information necessary to evaluate the request.